Strong.

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aff.

Bradley

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~388~~ 180

JOHN DIRST, PLAINTIFF IN ERROR,

vs.

WILLIAM B. MORRIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 12, 1870.

Dec 1871

SUPREME COURT OF THE UNITED STATES.

No. 388.

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vs.

WILLIAM B. MORRIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, circuit judge of the United States for the seventh judicial circuit, and the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, judges of said circuit court, on Thursday, the seventh day of April, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fourth year.

WILLIAM H. BRADLEY, *Clerk.*

WILLIAM B. MORRIS
vs.
JOHN DIRST. } 8659.—Ejectment.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

Be it remembered that, on the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-nine, came
2 William B. Morris, plaintiff, by Dent and Black, his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his declaration in ejectment against John Dirst, defendant, together with a notice and an affidavit thereto attached; and also at the same time filed his bond for costs in said entitled cause, which said bond, declaration, notice, and affidavit are respectively in the words and figures following, to wit:

Bond for costs.

In the United States circuit court for the northern district of Illinois.

WILLIAM B. MORRIS
v.
JOHN DIRST. } In ejectment.

We enter ourselves as securities for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him
3 we hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated at Chicago this 11th day of Jan'y, A. D. 1869.

DENT & BLACK,
Pl'ff's Att'ys.

(Endorsed:) Filed Jan'y 11, 1869. W'm H. Bradley, cl'k.

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court of the December term, A. D. 1868.

William B. Morris, who is a citizen of the State of Massachusetts, by Dent & Black, his attorneys, complains of John Dirst, who is a citizen of the State of Illinois, in a plea of trespass and ejectment, for that whereas heretofore, to wit, on the twenty-first day of December, in the

year eighteen hundred and sixty-seven, (A. D. 1867,) at and within the county of Kendall, and State of Illinois, the said plaintiff was
4 possessed, as of his own demense in fee-simple, of a certain tract or parcel of land, with the appurtenances, situate in the county of Kendall, in the said State of Illinois, and described as follows, to wit: The northeast quarter (¼) of section twenty-three, (23,) in township thirty-five (35) north, range eight (8) east of the third principal meridian, which said premises exceed in value the sum of five hundred dollars, and which the said plaintiff claim' in fee-simple. And the said plaintiff being so possessed thereof, the said defendant afterwards, to wit, on the same day and year last aforesaid, entered the said premises and ejected the said plaintiff therefrom, and from the time last aforesaid ha' unlawfully withheld, and do now unlawfully withhold, from the said plaintiff the possession thereof, to the damage of the said plaintiff of the sum of five hundred dollars; and therefore he bring' suit, etc.

DENT & BLACK,
Att'ys for Plaintiff.

To John Dirst, the above-named defendant;

5 You are hereby notified that the declaration, with a copy of which you are now herewith served, and to which this notice is attached, will be filed in the circuit court of the United States for the northern district of Illinois, on the eleventh (11) day of the January, A. D. 1869, and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in said declaration.

Dated this thirtieth day of December, A. D. 1868.

DENT & BLACK,
Att'ys for Plaintiff.

STATE OF ILLINOIS, *Kendall County, ss:*

Jonas Seely, being duly sworn, on oath says that he served the within declaration and notice by leaving a copy thereof with a white person, to wit, a member of the family of the defendant, about the age
6 ten years, at the dwelling-house of said defendant, the defendant being absent.

J. D. KERN.
Per JONAS SEELY,
Ass't Sheriff.

Subscribed & sworn to before me this 9th day of Jan'y, A. D. 1869.
[SEAL.] A. M. HOBBS, *Clerk.*

(Endorsed:) Filed Jan'y 11, 1869. W'm H. Bradley, cl'k.

On the same day, to wit, the 11th day of January, A. D. 1869, in the December term, A. D. 1868, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Rule to plead.

WILLIAM B. MORRIS
vs.
JOHN DIRST. } Ejectment.

Now comes the plaintiff, by Dent & Black, his attorneys, who file his

declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant; and, on motion of
7 the plaintiff's attorney, it is ordered by the court that said cause be docketed, and the defendant ruled to plead within twenty days, or that his default be entered.

On this day, to wit, the 29th day of January, A. D. 1869, came said defendant, by his attorneys, Scammon, McCagg and Fuller, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States, northern district of Illinois, of the December term, A. D. 1868.

JOHN DIRST
ads.
WILLIAM B. MORRIS. } In ejectment.

And the said defendant, by Scammon, McCagg & Fuller, his attorneys, comes and defends the wrong and injury, when, &c., and says that he is not guilty of unlawfully withholding the said premises claimed by the plaintiff, in manner and form as alleged by said plaintiff in his said declaration; and of this the said defendant puts himself upon the country, &c.

SCAMMON, McCAGG & FULLER,
8 *Defendant's Attorneys.*

(Endorsed:) Filed Jan'y 29th, 1869. W'm H. Bradley, cl'k.

On this day, to wit, the third day of November, in the adjourned October term, A. D. 1869, of said court, in the record of the proceedings thereof, in the said entitled cause, is the following entry, to wit:

Hearing of cause.

WILLIAM B. MORRIS
vs.
JOHN DIRST. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined, by agreement, they waive the intervention of a jury, and for trial put themselves upon the court; and, after hearing the evidence, the hour of adjournment having arrived, the arguments of counsel are postponed until to-morrow morning.

On this day, to wit, the fourth day of November, in the adjourned October term, A. D. 1869, of said court, in the record of the proceedings thereof, in the said entitled cause, is the following entry, to wit:

WILLIAM B. MORRIS
vs.
JOHN DIRST. } Ejectment.

9 Now come again the parties, by their attorneys, and after hearing the concluding arguments of counsel, the court not being sufficiently advised in the premises, takes the same under advisement.

On this day, to wit, the seventh day of April, in the adjourned March term, A. D. 1870, of said court, in the record of the proceedings thereof in the said entitled cause, is the following entry, to wit.

Judgment.

WILLIAM B. MORRIS
vs.
JOHN DIRST. } Ejectment.

This cause, having been heretofore submitted to the late district judge, and taken under advisement, now comes the parties, by their attorneys, and by agreement, this cause is now submitted to the circuit judge for trial, and the court having considered, and being now fully advised in the premises, finds the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in his declaration, as follows, to wit, a certain tract or parcel of land, with the appurtenances, situate in the county of Kendall, in the said State of Illinois, and described as follows, to wit, the north-east quarter (¼) of section twenty-three, (23,) in township thirty-five (35) north, range eight (8) east of the third principal meridian. The court also finds the estate established in the plaintiff on the trial to be
10 an estate in fee simple, and assesses his damages to the sum of one cent. It is thereupon considered and adjudged by the court, that the plaintiff do have and recover of the defendant possession of the said real estate and premises above described, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor; and that he also have and recover of the defendant the said sum of one cent, his damges, so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of thirty-five dollars and five cents, and that he have execution therefor.

11 On the hearing of said cause the following exceptions were taken, and were allowed by the court, which said exceptions are in the words and figures following, to wit:

BILL OF EXCEP.

In the circuit court of the United States for the northern district of Illinois.

WILLIAM B. MORRIS
vs.
JOHN DRIST. }

Bill of Exceptions.

Be it remembered that, on the trial of this cause, both parties waived

a jury, and submitted the same for trial to the court, and it was admitted that both parties claimed title to the premises in controversy under J. B. F. Russell as their common source of title, said J. B. F. Russell having entered the land in controversy herein, and obtained a patent therefor.

The plaintiff, to maintain the issue on his part, offered and read in evidence, first, a mortgage:

12 J. B. F. Russell to United States; dated Dec. 21, 1837; acknowledged March 1st, 1838; recorded, La Salle Co., May 11, 1838; Cook Co., April 25, 1838; Will Co., Jan'y 29, 1867.

Mortgage from Russell to U. S.

This indenture, made at the city of Washington, in the District of Columbia, this twenty-first day of December, in the year of our Lord one thousand eight hundred and thirty-seven, between John B. F. Russell, of Chicago, State of Illinois, of the first part, and Henry D. Gilpin, Solicitor of the Treasury of the United States, in trust for the United States of America, of the second part: Whereas the said John B. F. Russell, in and by a certain obligation or writing obligatory, under his hand and seal, bearing even date herewith, stands bound unto the said United States of America in the sum of one hundred and ten thousand five hundred and seven dollars and seventy-four cents, ($110,507 74,) for the payment of fifty-five thousand two hundred and fifty-three dollars and eighty-seven cents, ($55,253 87,) to be paid in three annual instal'ments, namely: Eleven thousand and fifty dollars and seventy-seven cents ($11,050 77) to be paid on the twenty-first day December, eighteen hundred and thirty-eight; and also twenty-two thousand one hundred and one dollars and fifty-five cents, ($22,101 55,) to be paid on the
13 twenty-first day of December, eighteen hundred and thirty-nine; and also twenty-two thousand one hundred and one dollars and fifty-five cents, ($22,101 55,) to be paid on the twenty-first day of December, eighteen hundred and forty, with lawful interest for the same, as in and by the said recited obligation and condition thereof, relation being thereunto had, more fully and at large appears.

Now this indenture witnesseth: That the party of the first part, for the better securing the payment of the sum of money mentioned in the said obligation expressed, with its interest, unto the said United States of America, in discharge of the said recited obligation, as of the further sum of one dollar to him in hand paid by the said Henry D. Gilpin, Solicitor of the Treasury, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said Henry D. Gilpin, Solicitor of the Treasury of the United States, and his successors, in trust for the United States of America—

All that parcel or lot of land situated in the town of "Cottage Grove," Cook County, State of Illinois, as the same is delineated on a map or plat of said town on file in the recorder's office of said county,
14 containing seventy-three (73) acres, laid out in lots, lying in the northeast quarter of section thirty-five, (35,) in township thirty-nine, (39,) and range fourteen (14) east of the 3d principal meridian.

Also, all those certain pieces or parcels of land situate, lying, and being in the county of La Salle, in the State of Illinois, to wit: The north half & southwest quarter of section four, (4,) township thirty-five, (35,)

range nine (9) east of the 3d principal meridian, containing four hundred & eighty (480) acres; section eighteen, (18,) township thirty-five, (35,) range nine (9) east of the 3d principal meridian, containing five hundred & sixty-one $\frac{94}{100}$ acres, ($561\frac{94}{100}$;) the west half of section eight, (8,) township thirty-five, (35,) range nine (9) east of the 3d principal meridian, containing three hundred and twenty acres, (320;) & east half of section thirty-three, (33,) township thirty-five, (35,) range six (6) east of the 3d principal meridian, containing three hundred and twenty acres, (320;) and the east half of the northwest quarter of section twenty-eight, (28,) township thirty-five, (35,) range six (6) east of the 3d principal meridian, containing eighty acres, (80;) and east half of section twenty-eight, (28,) township thirty-five, (35,) range six (6) east of the 3d principal meridian, containing three hundred & twenty acres, (320;)
15 and section twenty-six, (26,) township thirty-four, (34,) range seven (7) east of the 3d principal meridian, containing six hundred & forty acres, (640;) and west half of the southeast and east half of the northeast quarter of section thirteen, (13,) township thirty-three, (33,) range eight (8) east of the 3d principal meridian, containing one hundred & sixty acres, (160;) and southeast quarter of section four, (4,) township thirty-three, (33,) range nine (9) east of the 3d principal meridian, containing one hundred & sixty acres, (160,) and west half of the southwest quarter of section twenty-eight, (28,) township thirty-six, (36,) range nine (9) east of the 3d principal meridian, containing eighty acres, (80;) and south half of section twenty-four, (24,) township thirty-three, (33,) range eight (8) east of the 3d principal meridian, containing three hundred & twenty acres, (320;) and northeast quarter of section twenty three, (23,) township thirty-five, (35,) range eight (8) east of the 3d principal meridian, containing one hundred & sixty acres, (160.)

Also, a certain tract or parcel of land situate, lying, and being in the county of Cook, State of Illinois, being the north half of section eighteen, (18,) township thirty-seven, (37,) range thirteen (13) east of the 3d principal meridian, containing three hundred & five $\frac{50}{100}$ acres, ($305\frac{50}{100}$.)

Also, that certain pieces or parcels of land situate, lying, and
16 being in the county of La Salle, & State of Illinois, being part of the south half and the northwest quarter of section two, (2,) township thirty-three, (33,) range eight (8) east of the 3d principal meridian, containing sixty (60) acres, laid off in town lots, called "Kankakee."

Also, those certain lots, pieces, or parcels of land situate, lying, and being in the town of "Canal Porte," in the county of Cook, State of Illinois, known and designated on the plat of said town, as on file at the recorder's office in said county, to wit: Lots five, (5,) six, (6,) seven, (7,) eight, (8,) ten, (10,) eleven, (11,) twelve, (12,) in block eighteen, (18;) lots five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) in block twenty-four, (24;) lots one, (1,) two, (2,) three, (3,) four, (4,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block twenty-six, (26;) lots one, (1,) three, (3,) thirteen, (13,) in block twenty-eight, (28;) lots eight, (8,) six, (6,) four, (4,) two, (2,) in block sixty-eight, (68;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block seventy, (70;) lots one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10.) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block seventy-two, (72;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block seventy-seven, (77;) lots five,
17 (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) in block eighty, (80;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen,

(13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block eighty-two, (82;) lots five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) in block eighty-four, (84;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block eighty-six, (86;) lots one, (1,) five, (5,) fifteen, (15,) sixteen, (16,) in block twenty-nine, (29;) lots two, (2,) three, (3,) four, (4,) in block eighty-eight, (88;) lots six, (6,) seven, (7,) fifteen, (15,) sixteen, (16,) in block thirty, (30;) lots four, (4,) six, (6,) eleven, (11,) twelve, (12,) in block thirty-one, (31;) lots three, (3,) seven, (7,) in block thirty-two, (32;) lots five, (5,) eight, (8,) ten, (10,) in block thirty-three, (33;) lots three, (3,) four, (4,) eleven, (11,) sixteen, , in block thirty-four, (34;) lots five, (5,) six, (6,) ten, (10,) eleven, (11,) in block thirty-five, (35;) lots two, (2,) four, (4,) five, (5,) twelve, (12,) in block thirty-six, (36;) lots one, (1,) eleven, (11,) twelve, (12,) fifteen, (15,) in block thirty-seven, (37;) lots two, (2,) three, (3,) four, (4,) fourteen, (14,) in block thirty-eight, (38;) lots one, (1,) seven, (7,) fourteen, (14,) fifteen, (15,) in block thirty-nine, (39;) lots two, (2,) six, (6,) seven, (7,) eleven, (11,) in block forty, (40;) lots eight, (8,) ten, (10,) eleven, (11,) twelve, (12,) in block forty-one, (41;) lots two, (2,) five, (5,) eight, (8,) twelve, (12,) in block forty-two, (42;) lots three, (3,) five, (5,) seven, (7,) nine, (9,)
18 in block forty-three, (43;) lots seven, (7,) twelve, (12,) thirteen, (13,) sixteen, (16,) in block forty-four, (44;) lots three, (3,) four, (4,) fifteen, (15,) seventeen, (17,) in block forty-six, (46;) lots two, (2,) six, (6,) eleven, (11,) thirteen, (13,) in block forty-seven, (47;) lots two, (2,) three, (3,) ten, (10,) eleven, (11,) in block forty-eight, (48;) lots one, (1,) twelve, (12,) fourteen, (14,) in block fifty, (50;) lots six, (6,) eight, (8,) in block fifty-one, (51;) lots seven, (7,) eight, (8,) in block fifty-two, (52;) lots one, (1,) four, (4,) in block fifty-three, (53;) lots five, (5,) seven, (7,) in block fifty-four, (54;) lots one, (1,) three, (3,) in block fifty-five, (55;) lots four, (4,) seven, (7,) in block fifty-six, (56;) lots one, (1,) four, (4,) in block fifty-eight, (58;) lots four, (4,) six, (6,) eight, (8,) in block fifty-nine, (59;) lots five, (5,) seven, (7,) eight, (8,) ten, (10,) in block sixty, (60;) lots three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) in block sixty-one, (61;) lots one, (1,) two, (2,) four, (4,) in block sixty-two, (62;) lots four, (4,) seven, (7,) nine, (9,) ten, (10,) in block sixty-three, (63;) lots one, (1,) two, (2,) fifteen, (15,) sixteen, (16,) in block sixty-four, (64;) lots six, (6,) thirteen, (13,) fourteen, (14,) fifteen, (15,) in block sixty-five, (65;) lots four, (4,) thirteen, (13,) fifteen, (15,) sixteen, (16,) in block sixty-six, (66;) lots five, (5,) seven, (7,) eleven, (11,) twelve, (12,) in block sixty-seven, (67.)

Also, that certain parcel or lot of land lying and being in the
19 town of Ionia, in the county of Ionia, in the State of Michigan, as laid out by N. J. Brown, a map of which town is filed and recorded in the recorder's office in and for the county of Kalamazoo, in said State, viz: Lot one, (1,) in block twenty-two, (22;) lot twenty-seven, (27,) in block twenty-four, (24;) lot eight, (8,) in block five, (5;) lot twenty-eight, (28,) in block six, (6;) lot fourteen, (14,) in block five, (5;) lot two, (2,) in block one hundred & nineteen, (119;) lot thirty-one, (31,) in block twenty-five, (25;) lot three, (3,) in block twenty-eight, (28;) lot four, (4,) in block twenty-eight, (28.)

Also, all those parcels and lots of land known and designated as follows, viz: Blocks numbered six, (6,) ten, (10,) thirty-six, (36,) forty, (40,) eight, (8,) thirty-eight, (38,) five, (5,) forty-two, (42,) seventeen, (17,) sixteen, (16,) thirty-two, (32,) sixty, (60,) twenty-seven, (27,) fifty-nine, (59,) fifteen, (15,) forty-seven, (47,) and lots three, (3,) four, (4,) five, (5,) six, (6,) in block sixty-eight, ; lots one, (1,) in block sixty-three, (63;) lots four,

(4,) five, (5,) in block sixty-four, (64,) all of which lots, blocks, and tracts of land are situate, lying, and being in King's addition to the town of "Centreville," in the county of St. Joseph's, in the State of Michigan, and is part of the southeast quarter of section twenty-five, (25,) township six (6) south, range eleven (11) west, and part of the section thirty, (30,) township six (6) south, range ten (10)
20 west, in the western land district of said State, all of which will more fully appear by reference to the plat of said town, now on file in the county of St. Joseph's.

Also, all those certain blocks and lots of land situate in the town of "Lyons," in the county of Milwaukee, and Territory of Wisconsin, and known and designated as follows, viz: Lot four, (4,) in block three, (3;) lot four, (4,) in block five, (5;) block six, (6;) block ten, (10;) lots two, (2,) three, (3,) in block twelve, (12;) lots five, (5,) six, (6,) in block twenty-eight, (28;) lots seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) in block thirty-two, (32;) lots two, (2,) in block forty-three, (43;) block fifty-two, (52;) lot five, (5,) in block fifty-six, (56;) lot four, (4,) in block sixty-one, (61,) of said town of Lyons, according to the map or plat of said town, recorded in the proper office, reference whereunto is hereby made.

Also, all those certain lots, blocks, and parcels of land situate in the Wisconsin Land Company's addition to Helena, in the Territory of Wisconsin, and known and designated as follows, viz: Lots seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) in block six, (6;) block thirteen, (13;) lots seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) in block fifteen, (15;) lots eleven, (11,) twelve,
21 (12,) in block thirty-seven, (37;) lots one, (1,) two, (2,) in block thirty-eight, (38;) lot four, (4,) in block thirty-nine, (39;) lots six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) in block fifty-three, (53;) lots one, (1,) two, (2,) in block fifty-six, (56;) lots six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) in blocks sixty-nine, (69;) block seventy-one, (71,) according to the map or plat of said town, as recorded in the proper office, reference whereunto is hereby made, being laid out upon the east half of the northeast quarter of section twenty, (20,) township eight, (8,) range four (4) east, and upon the east half of the northeast quarter of section twenty-nine (29) in the same range and township aforesaid.

Together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereto belonging or in any way appertaining, and the reversions and remainders, rents, issues, and profits thereof.

To have and to hold all the aforesaid messuages, lands and tenements, hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said Henry D. Gilpin, Solicitor of the Treasury of the United States, and his successors, in trust for and to the only proper use and behoof of the aforesaid United States of America forever:

Provided, always, nevertheless, that if the said John B. F.
22 Russell, his heirs, executors, or administrators shall and do well and truly pay or cause to be paid unto the said Henry D. Gilpin, Solicitor of the Treasury of the United States, or his successors, the aforesaid debt or sum of fifty-five thousand two hundred and fifty-three dollars and eighty-seven cents, ($55,253 87,) and every part thereof, on the days and at the time hereinbefore mentioned and appointed for payment thereof, with lawful interest for the same, according to the condition of the said recited obligation, without any fraud or further delay,

and without any deduction, defalcation, or abatement, to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, then and from thenceforth, as well this present indenture, and the real estate hereby granted, as the said recited obligation, shall cease, determine, and become absolutely null and void, to all intents and purposes, anything hereinbefore contained to the contrary, in anywise notwithstanding; and the party of the first part for himself, his heirs, executors, and administrators hereby covenants and agrees with the party of the second part and his successors that if default shall be made in the payment of the said sum of money, and the interest that may become due thereon, or any part thereof, that then and from thenceforth it shall be lawful
23 for the party of the second part and his successors to enter upon and take possession of the said premises, and to sell the same at public auction, and convey the same to the purchaser or purchasers in fee-simple and agreeable to law; and out of the monies arising from such sale or sales to retain the principal and interest, which shall then be due on the said recited obligation, and all costs and charges, rendering the overplus (if any) to the party of the first part, his heirs, executors, administrators, and assigns.

In testimony whereof the party of the first part has hereunto set hand and seal, this day and year first above written.

J. B. F. RUSSELL. [SEAL.]

Signed, sealed, and delivered in the presence of us—
JOS. H. WARING.
NICH'S HASPUR.

DISTRICT OF COLUMBIA,
Washington County, to wit:

This day John B. F. Russell, the grantor within named, personally came before me, the undersigned clerk of the circuit court of the District of Columbia for the county of Washington, aforesaid, and acknowledged this indenture mortgage from him to Henry D. Gilpin, Solicitor of the
24 Treasury of the United States, the grantee within named in trust for the United States of America, to be his act and deed for the purposes therein mentioned.

In testimony whereof I have hereto set my hand and the seal of said court, at the city of Washington, on the first day of March, A. D. one thousand eight hundred and thirty-eight.

[SEAL.] W. M. BRENT, *Clk.*

TERRITORY OF WISCONSIN,
Iowa County, ss:

I hereby certify that the within mortgage was duly rec'd & recorded on the 8th day of April, A. D. 1839, at 10 o'clock a. m., in deed book H, pages 145, 146, 147, 148, & 149, in the recorder's office in & for said county.

For HENRY MESSERSMITH, *Register.*
S. TAYLOR, *Clk.*

RECORDER'S OFFICE,
Ottawa, La Salle County, May 26th, 1838.

This is to certify that the forgoing mortgage was left for record on the 11th day of May, 1838, and recorded on the 22nd day of May, 1838, in book No. 1 of deeds, page 57.

ANTHONY PITZER,
Recorder.

25 U. S. of America v. John B. F. Russell. Rec. May 22nd, 1838, B No. 1, page 57. Filed 11th May, 7 p. m.

STATE OF ILLINOIS, *County of Cook, ss:*

This certifies that the within instrument was left for record on the 25th day of April, A. D. 1838, and was recorded in book P of mortgages, page 365.

RICH'D J. HAMILTON, *Recorder.*

(6133.)

No. 55621.

STATE OF ILLINOIS, *Will County, ss:*

I certify that this instrument was filed for record this 29th day of January, A. D. 1867, & duly recorded in book 98, on p. 297.

B. F. RUSSELL, *Recorder.*

Second. Transcript of proceedings in equity in the circuit court of the United States for the district of Illinois, in a cause instituted
26 in said court on the 1st day of September, A. D. 1840, wherein The United States of America was complainant, and John B. F. Russell and others were defendants, for the foreclosure of the aforesaid mortgage given by J. B. F. Russell to the United States; which transcript of record and proceedings is in the words and figures following:

Transcript of U. S. vs. Russell et. al.

UNITED STATES OF AMERICA,
District of Illinois:

THE UNITED STATES OF AMERICA
vs.
JOHN B. F. RUSSELL, FRANCIS PEYTON, Gurdon S. Hubbard, Josiah S. Breese, Henry L. Fuller, Ashbel Steele, William Teal, Hiram Hugunin, Ebenezer Peck, & Richard J. Hamilton.

Decree in chancery in the circuit court of the United States of America for the district of Illinois, held at the city of Springfield, in the district aforesaid, before the Hon. John McLean, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Nathaniel Pope, judge of the district court of the United States for the district of Illinois, associate judges of said circuit court, on Tuesday, the twenty-second day of June, in the year of our Lord
27 one thousand eight hundred and forty-one, and of our independence the year.

DISTRICT OF ILLINOIS, *sct:*

The United States of America, complainants, put in their place F. Foreman, their solicitor, against said defendants, in a bill in chancery.

This day, to wit, the first day of September, in the year of our Lord one thousand eight hundred and forty, came the said complainants, by F. Forman, their solicitor, and filed their bill against said defendants as follows, viz:

Bill.

United States of America, circuit court of the United States for the district of Illinois.

To the hon. judges of said court, in chancery sitting:

Humbly complaining, sheweth unto your honors your orators, the United States of America, that, on or about the 21st day of December, in the year of our Lord one thousand eight hundred and thirty-seven, John B. F. Russell, who is a citizen and resident of the State of Illinois, being indebted to your orators in a large sum of money, to wit, the sum of fifty-five thousand two hundred and fifty-three dollars and eighty-seven cents, and being seized, or pretending to be seized, in fee,
28 amongst others, of all the following-described pieces or parcels of land situated in the town of "Cottage Grove," in the county of Cook, and State of Illinois, as the same is delineated on a map or plat of said town on file in the recorder's office of said county, containing seventy-three acres laid out in lots, lying on the northeast quarter of section thirty-five, in township thirty-nine, and range fourteen east of the third principal meridian. Also, all those certain pieces or parcels of land situate, lying, and being in the county of La Salle, in the State of Illinois, to wit: The north half and the southwest quarter of section four, township thirty-five, range nine east of the third principal meridian, containing four hundred and eighty acres; section eighteen, township thirty-five, range nine east of the third principal meridian, containing four hundred and eighty acres; section eighteen, township thirty-five, range nine east of the third principal meridian, containing five hundred and sixty-one $\frac{94}{100}$ acres; the west half of section eight, township thirty-five, range nine east of the third principal meridian, containing three hundred and twenty acres; and the east half of section thirty-three, township thirty-five, range six east of the third principal meridian, containing three hundred and twenty acres; and the east
29 half of the northwest quarter of section twenty-eight, township thirty-five, range six east of the third principal meridian, containing eighty acres; and the east half of section twenty-eight, township thirty-five, range six east of the third principal meridian, containing three hundred and twenty acres; and section twenty-six, township thirty-four, range seven east of the third principal meridian, containing six hundred and forty acres; and the west half of the southeast, and the east half of the northeast quarter of section thirteen, township thirty-three, range eight east of the 3d principal meridian, containing one hundred and sixty acres; and the southeast quarter of section four, township thirty-three, range nine east of the third principal meridian, containing one hundred and sixty acres; and the west half of the southwest quarter of section twenty-eight, township thirty-six, range nine east of the third principal meridian, containing eighty acres; and the south half of section twenty-four, township thirty-three, range eight east of the third principal meridian, containing three hundred and twenty acres; and the northeast quarter of section twenty-three, township thirty-five, range eight east of the third principal meridian, containing one hundred
30 and sixty acres. Also, a certain tract or parcel of land situate, lying, and being in the county of Cook, in the State of Illinois, being the north half of section eighteen, township thirty-seven, range thirteen east of the third principal meridian, containing three hundred and five $\frac{50}{100}$ acres. Also, that certain piece or parcel of land situate, lying, and being in the county of La Salle, and State of Illinois, being

part of the south half of the northwest quarter of section two, township thirty-three, range eight east of the third principal meridian, containing sixty acres, laid off in town lots called "Kankakee." Also, those certain lots, pieces, or parcels of land situate, lying, and being in the town of "Canal Port," in the county of Cook, and State of Illinois, known and designated on the plat of said town, as on file in the recorder's office in said county, to wit: Lots five, six, seven, eight, nine, ten, eleven, and twelve in block eighteen; lots five, six, seven, eight, nine, ten, eleven, and twelve in block twenty-four; lots one, two, three, four, fourteen, fifteen, sixteen, in block twenty-six; lots one, three, and thirteen, in block twenty-eight; lots eight, six, four, two, in block sixty-eight; lots one, two, three, four, thirteen, fourteen, fifteen, & sixteen, in block seventy; lots one, two, three,
31 four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, in block seventy-two; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, in block seventy-seven; lots five, six, seven, eight, nine, ten, in block eighty; lots one, two, three, four, thirteen, fourteen, fifteen, sixteen, in block eighty-two; lots five, six, seven, eight, nine, ten, eleven, in block eighty-four; lots one, two, three, four, thirteen, fourteen, fifteen, sixteen, in block eighty-six; lots one, five, fifteen, sixteen, in block twenty-nine; lots two, three, four, in block eighty-eight; lots six, seven, fifteen, sixteen, in block thirty; lots four, six, eleven, twelve, in block thirty-one; lots three, seven, in block thirty-two; lots five, eight, ten, in block thirty-three; lots three, four, eleven, sixteen, in block thirty-four (4;) lots five, six, ten, eleven, in block thirty-five; lots two, four, five, twelve, in block thirty-six; lots one, eleven, twelve, fifteen, in block thirty-seven; lots two, three, four, fourteen, in block thirty-eight; lots one, seven, fourteen, fifteen, in block thirty-nine; lots two, six, seven, eleven, in block forty; lots eight, ten, eleven, twelve, in block forty-one; lots two, five, eight,
32 twelve, in block forty-two; lots three, five, seven, nine, in block forty three; lots seven, twelve, thirteen, sixteen, in block forty-four; lots three, four, fifteen, seventeen, in block forty-six; lots two, six, eleven, thirteen, in block forty-seven; lots two, three, ten, eleven, in block forty-eight; lots one, twelve, fourteen, in block fifty; lots six, eight, in block fifty-one; lots seven, eight, in block fifty-two; lots one, four, in block fifty-three; lots five, seven, in block fifty-four; lots one, three, in block fifty-five; lots four, seven, in block fifty-six; lots one, four, in block fifty-eight; lots four, six, eight, in block fifty-nine; lots five, seven, eight, ten, in block sixty; lots three, four, thirteen, fourteen, in block sixty-one; lots one, two, four, in block sixty-two; lots four, seven, nine, ten, in block sixty-three; lots one, two, fifteen, sixteen, in block sixty-four; lots six, thirteen, fourteen, fifteen, in block sixty-five; lots four, thirteen, fifteen, sixteen, in block sixty-six; lots five, seven, eleven, twelve, in block sixty-seven; the said John B. F. Russell, delivered to Henry D. Gilpin, Solicitor of the Treasury of the United States, in trust for your orators, his certain bond or writing obligatory under his hand and seal, duly made and executed in the penal sum of one hundred and ten thousand and five hundred and seven dollars, and seventy-four cents, with a condition thereunder written
33 to pay the said Gilpin, Solicitor as aforesaid, in trust and for the use of your orators, the said sum of fifty-five thousand two hundred and fifty dollars, and fifty-eight cents, in three annual instalments, namely: Eleven thousand and fifty dollars and seventy-seven cents to be paid on the twenty-first of December, in the year one thousand eight hundred and thirty-eight; and also twenty-two thousand one hundred and one dollars and fifty-five cents to be paid on the

twenty-first day of December, in the year one thousand eight hundred and thirty-nine; and also twenty-two thousand one hundred and one dollars and fifty-four cents to be paid on the twenty-first day of December, in the year of our Lord one thousand eight hundred and forty, with interest thereon, as in and by the said bond or obligation now in the possession of your orators and ready to be produced as this honorable court shall direct, and to which when produced your orators for greater certainty pray leave to refer this honorable court, will more fully and at large appear. And your orators further shows unto your honors, that the said John B. F. Russell, in order to secure the payment of the said principal sum of money with the lawful interest thereon in manner aforesaid, and also of the further sum of one dollar to
34 him in hand paid by your orators, at and before the ensealing and delivery, in and by a certain indenture of mortgage, bearing date the same day and year last aforesaid, did grant, bargain, sell, release, and confirm unto said Henry D. Gilpin, Solicitor as aforesaid, and his successors, forever, in trust for the United States of America, your orators.

All those lots, tracts, pieces, and parcels of land hereinbefore described, together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditament', and appurtenances thereto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof:

To have and to hold all the aforesaid messuages, lands and tenements, hereditaments and premises above mentioned, granted, or intended to be granted, in said mortgage indenture unto the said Henry D. Gilpin, Solicitor of the Treasury of the United States, and his successors, in trust for and to the only proper use and behoof of the aforesaid United States of America, your orators forever: Provided, always, and the indenture of mortgage and the estate and interest thereby created were upon this condition, nevertheless, that if the said John B. F. Russell, his
35 heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, unto the said Henry D. Gilpin, Solicitor for the Treasury of the United States as aforesaid, or to his successors, the aforesaid debt or sum of fifty-five thousand two hundred and fifty-three dollars and eighty-seven cents, and every part thereof, on the days and at the time hereinbefore mentioned and appointed for payment thereof, with lawful interest on the same, according to the condition of the said recited obligation, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, then and from thenceforth, as well the present indenture, and the real estate hereby granted, as the said recited obligation, shall cease, determine, and become absolutely null and void to all intents and purposes, anything hereinbefore contained to the contrary in anywise nothwithstanding. And the said Russell, in and by the said indenture of mortgage, did, for himself, his heirs, executors, and administrators, covenant and agree to and with your orator, and his successors, that if default should be made in the payments of the said sum of money last abovementioned, and the interest that might have become due thereon, or any part thereof, that then and from thenceforth it should be lawful
36 for said Solicitor, and his successors, to enter upon and take possession of the said premises, and to sell the same at public auction, and to convey the same to the purchaser or purchasers, in fee simple, and agreeably to law, and out of the moneys arising from such sales to retain the principal and interest which shall then be due on the said re-

cited obligation, and all costs and charges, rendering the overplus (if any) to the said Russell, his heirs, executors, and administrators, and assigns.

And your orator further shows unto your honors that, on the first day of March, in the year one thousand eight hundred and thirty-eight, the execution of said indenture of mortgage was acknowledged, in due form of law, before W'm Brent, clerk of the circuit court of the District of Columbia for the county of Washington, by the said John B. F. Russell and the said Henry D. Gilpin, Solicitor as aforesaid, as in and by a certificate of the acknowledgement thereof, endorsed on the said indenture of mortgage, and signed by the said W'm Brent, and sealed with the seal of said court as aforesaid, and to which your orator for greater certainty prays leave to refer, may more fully and at large appear.

And your orator further shows unto your honors that, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and thirty-eight, the said indenture of mortgage was, in due form
37 of law, recorded in the recorder's office in and for the county of Cook, State of Illinois, in book P of mortgages, page 365, by Richard J. Hamilton, recorder of said county, as by the record of the said indenture of mortgage now remaining in the office of the said recorder, and the certificate of record endorsed on said indenture of mortgage, and signed by the said Richard J. Hamilton, recorder as aforesaid, sufficiently appears, and to which said record and the certificate thereof as aforesaid endorsed on the said indenture of mortgage, your orator for the greater certainty pray leave to refer this honorable court if it be necessary.

And your orator further shown unto your honors that, on the eleventh day of May, eighteen hundred and thirty-eight, said mortgage was left for record; and, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and thirty-eight, the said indenture of mortgage was, in due form of law, recorded in the office of the recorder of the county of La Salle, State of Illinois, in book No. one, at page 57, by Anthony Pitzer, recorder of said county as aforesaid, as by the record of said indenture of mortgage now remaining in the omce of the said recorder, and the certificate thereof endorsed on said indenture of mortgage, and signed by the said Anthony Pitzer, recorder as afore-
38 said, sufficiently appears, and to which said record and the certificate thereof endorsed on said indenture of mortgage, your orator for greater certainty prays leave to refer if it be necessary so to do.

And your orators further shew unto your honors that all the first two installments mentioned in said bond or obligation, together with all the interest due thereon, still remain due and owing, no part thereof having been paid or satisfied unto your orators, so that your orators are greatly delayed and disappointed in the receipt of said money, by means of which said several premises, the said indenture of mortgage, and the estate thereby mortgaged to said Henry D. Gilpin, Solicitor as aforesaid, in trust for your orators, became absolute.

And your orators further shew unto your honors that the said Russell has at all times possessed and enjoyed and that he still does possess and enjoy the said mortgaged premises, with the appurtenances, and that he has always received and still does receive the rents, issues, and profits thereof.

And your orators further shew unto your honors and expressly charge that the said mortgaged premises are a slender and scanty security for the payment of the principle and interest money so due

as aforesaid to your orators. And that your orators, or some other person for them, have frequently and in a friendly manner applied to the said John B. F. Russell and requested him to pay and discharge the said principle and interest as aforesaid due to your orators on the said bond or obligation and indenture of morgage. And your orators well hoped that the said John B. F. Russell would have complied with such reasonable request of your orators, and would have paid to your orators such principle and interest money so as aforesaid due to your orators on such bond and obligation, in manner aforesaid, as in equity and good conscience he ought to have done. But now, so it is, may it please your honors, that the said John B. F. Russell, combining and confederating to and with divers other persons at present unknown to your orators, but whose names when discovered your orators pray may be inserted herein, and that they may be made parties hereto, with proper and apt words to charge them how to injure and aggrieve your orators in the premises, and to defraud them of the said interest and principle moneys so as aforesaid due to your orators on the said bond or obligation and indenture of mortgage hereinbefore mentioned, sometimes give out and pretend that, although your orators' estate in the premises may have become absolute in law; yet that your orators cannot dispose of the said premises to any purchaser in any manner, and that the same will be subject to an equity of redemption. And at other times, the said John B. F. Russell gives out and pretends that the said two installments of said principle sum of money so due your orators as aforesaid, and all the interest thereof, have been paid off and discharged, and thereby that the said bond or obligation and the said indenture of mortgage have become void, and that your orators' estate and title and interest in the premises have become totally extinguished. And your orators further show unto your honors that Francis Peyton, Gurdon S. Hubbard, Josiah S. Breese, Henry S. Fuller, Augustus Garrett, Frederick J. Fraylor, Ashbell Steele, William Teal, Hiram Hugunin, Daniel Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioner of school lands, have or pretended to have some interest or claim upon the above-described premises as judgment-creditors or otherwise. In tender consideration whereof, and forasmuch as your orators have not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, nor safely sell the same for the payment and satisfaction of the said principal and interest money so as aforesaid due to your orators on the said bond or obligation and indenture of mortgage in manner aforesaid: To the end, therefore, that the said John B. F. Russell, Francis Peyton, Gurdon S. Hubbard, Josiah S. Breese, Henry L. Fuller, Augustus Garrett, Frederick J. Flaylor, Ashbel Steele, William Teal, Hiram Hugunin, Daniel Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioner of school lands, (and their confederates when discovered,) may, upon their several and respective corporal oaths, true, full, and perfect answers make to all and singular the said premises, as fully and particularly as if the same were here again repeated and they thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, or belief; and that the said John B. F. Russell may be decreed to pay to your orators the said first two installments of principle and interest money hereinbefore expressed and so due on the said bond or obligation and indenture of mortgage hereinbefore mentioned and set forth as aforesaid, and all the interest money now due and to grow due thereon,

42 together with all your orators' costs and charges in this behalf sustained, by a short day to be appointed by this honorable court, and in default thereof, that the said John B. F. Russell, and all claiming or to claim under them, may be foreclosed of and from all equity of redemption and claim of in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver unto your orators all deeds, demises, and writings whatsoever, relating to or concerning the same; and that all and singular the said mortgaged premises, with all the appurtenances, may, by the order and decree of the honorable court, be sold, and out of the moneys arising from the sale thereof, your orators may be paid the full amount of the said first two installments hereinbefore mentioned and expressed, and so due to your orators as aforesaid, on the said bond or obligation and indenture of mortgage, in manner aforesaid, and all the interest-money due and to grow due thereon, together with all your orators' costs and charges in this behalf sustained; and that your orators may have such other and further relief in the premises as to your honors may seem proper, and shall be agreeable to equity and good conscience:

May it please your honors, the premises considered, to grant unto your orators a writ of subpœna to be directed to the said John
43 B. F. Russell, Francis Peyton, Gurdon S. Hubbard, Josiah S. Breese, Henry L. Fuller, Augustus Garnett, Frederick J. Flaylor, Ashbel Steele, William Teal, Hiram Hugunin, Daniel Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioner of school lands, issuing out of and under the seal of this honorable court, therein and thereby commanding them, on a certain day, and under a certain penalty therein expressed, to be and appear before your honors in this honorable court, then and there to answer all and singular the said premises, and to stand to and abide by such order and decree therein, as to your honors shall seem meet, and shall be agreeable to equity and good conscience.

And your orators will ever pray, &c.

F. FORMAN, *Solicitor.*

And thereupon the following subpœna issued, viz:

UNITED STATES OF AMERICA,
District of Illinois, sct:

The United States of America to the marshall of the district of Illinois, greeting:

We command you that you summon John B. F. Russell, Francis Peyton, Gurdon S. Hubbard, Josiah S. Breese, Henry L. Fuller, Augustus Garrett, Frederick J. Flaylor, Ashbel Steele, William Teal, Hi-
44 ram Hugunin, Daniel Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioner of school lands, if they be found in your district, to be and appear before our judges of our circuit court of the United States for the district of Illinois, at the next term thereof, to be holden at Springfield, in the district aforesaid, on the first Monday of December next, to answer unto the United States of America, in a bill in chancery filed in said court, and have you then and there this writ.

Witness the Hon. Rogers B. Taney, Chief Justice of the Supreme Court of of the United States of America, at Springfield aforesaid, this first day of September, in the year of our Lord one thousand eight hundred and forty, and of our independence the year.

[SEAL.] JAMES F. OWINGS, *Clerk.*

Which said subpœna went into the hands of the marshall to be executed, & was returned by him into the said clerk's office, executed upon all of the defendants by delivering to each of them true copies thereof.

This day, to wit, the seventeenth day of December, of the term of December, in the year last aforesaid, on motion of complainants, by their solicitor, this cause is ordered to be continued.

This day, to wit, the fourteenth day of June, in the year of
45 our Lord one thousand eight hundred and forty-one, came the said complainants, by their solicitor, and the said defendants having been duly served with process, and having failed to appear as by the written writ they were commanded, and having failed to answer the complainants' bill of complaint herein filed, although more than three calendar months have elapsed and passed by since the return of the writ aforesaid upon them executed, it is therefore considered that the default of the said defendants be entered herein for want of answer, and that the bill herein be taken against them as confessed.

This day, to wit, the twenty-second day of June, in the year last aforesaid, come the complainants, by their solicitor, and it appearing to the court that the default of the defendants herein has been entered of a former day of this term:

It is therefore further adjudged and decreed that the bond and mortgage set forth in the complainants' bill of complaint be, and the same hereby is, referred to a master in chancery of this court, to compute the amount due the complainants thereon, and report the same to this court.

Whereupon the reference is made as by order.

And thereupon come the complainants, by Justin Butterfield, their solicitor, and file the report of Schuyler Strong, one of the masters
46 in chancery of this court, to whom it had been referred, to compute the amount due the complainants on the bond and indenture of mortgage set forth in the complainants' bill of complaint, by which said report it appears that there is due to the said complainant on the said bond and indenture of mortgage, the sum of sixty-six thousand eight hundred and fifty-seven dollars and eighteen cents, ($56,857 18.)

And on motion of the complainant, it is ordered, adjudged, and decreed that the said defendant, John B. F. Russell, pay to the said complainants the said sum of sixty-six thousand eight hundred and fifty-seven dollars and eighteen cents, ($66,857 18,) within twenty days from the date of this order, together with interest thereon at the rate of twelve per cent. per annum.

And it is further ordered, adjudged, and decreed that, in case of default of such payment or any part thereof, the said John B. F. Russell, Francis Peyton, Gurdon S. Hubbard. Josiah S. Breese, Henry L. Fuller, Augustus Garrett, Frederick F. Flaylor, Ashbel Steele, William Teal, Hiram Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioner of school lands for Cook County, and each of them and every of them, and all persons claiming or to claim under them or either
47 of them be, and the same are hereby, forever foreclosed and debarred of and from all equity of redemption, right, claim, or possession whatever, of, in, and to the said mortgaged premises.

And it is further ordered, adjudged, and decreed that, in case of default of such payment or any part thereof, that all and singular the said mortgaged premises mentioned and described in said bill of com-

plaint, be sold to the highest bidder, by and under the direction of one of the masters of this court, he being authorized and empowered to make such sale, the said master giving sixty days' notice of such sale, by posting up three written notices of sale in the several counties where said premises are situated, which said premises are described as follows:

All that parcel or lot of land situated in the town of Cottage Grove, Cook County, State of Illinois, as the same is delineated on a map or plat of said town, on file in the recorder's office of said county, containing seventy-three (73) acres, laid out in lots, lying in the northeast quarter of section thirty-five, (35,) in township thirty-nine, (39,) and range fourteen (14) east of the 3d principal meridian. Also, all those certain pieces or parcels of land situate, lying and being in the county of La Salle, in the State of Illinois, to wit: The north half and
48 southwest quarter of section four, (4,) township thirty-five, (35,) range nine (9) east of the 3d principal meridian, containing four hundred and eighty acres, (480) acres. Also, section eighteen, (18,) township thirty-five, (35,) range nine (9) east of the third principal meridian, containing five hundred and sixty-one $\frac{94}{100}$ acres (561.94;) the west half of section eight, (8,) township thirty-five, (35,) range nine (9) east of the 3d principal meridian, containing three hundred and twenty (320) acres; & east half of section thirty-three, (33,) township thirty-five, (35,) range six (6) east of the 3d principal meridian, containing three hundred and twenty acres, (320;) and the east half of the northwest quarter of section twenty-eight, (28,) township thirty-five, (35,) range six (6) east of the 3d principal meridian, containing eighty acres, (80;) and east half of section twenty-eight, (28,) township thirty-five, (35,) range six (6) east of the third principal meridian, containing *containing* three hundred and twenty acres, (320;) and section twenty-six, (26,) township thirty-four, (34,) range seven (7) east of the third principal meridian, containing six hundred and forty acres, (640;) and the west half of the southeast, and the east half of the northeast quarter of section thirteen, (13,) township thirty-three, (33,) range eight (8)
49 east of the 3d principal meridian, containing one hundred and sixty (160) acres; and the southeast quarter of section four, (4,) township thirty-three, (33,) range nine (9) east of the third principal meridian, containing one hundred and sixty acres, (160;) and the west half of the southwest quarter of section twenty eight, (28,) township thirty-six, (36,) range nine (9) east of the third principal meridian—[marginal note page 23, the following words appear in the decree as entered upon the court journal, but are omitted in the judgment record, to wit: "Containing eighty acres, (80;) and the south half of section twenty-four, (24,) township thirty-three, (33,) range eight (8) east of the 3rd principal meridian," W. H. B., clerk,]—containing three hundred and twenty (320) acres; and the northeast quarter of section twenty-three, (23,) township thirty-five, (35,) range eight (8) east of the third principal meridian, containing one hundred and sixty acres, (160.) Also, a certain tract or parcel of land situate, lying, and being in the county of Cook, in the State of Illinois, being the north half of section eighteen, (18,) township thirty-seven, (37,) range (13) east of the third principal meridian, containing three hundred and five $\frac{50}{100}$ acres, ($305\frac{50}{100}$.)
Also, that certain piece or parcel of land situate, lying, and being
50 in the county of La Salle, and State of Illinois, being part of the south half and the northwest quarter of section two, township thirty-three, (33,) range eight (8) east of the third principal meridian, containing sixty acres, (60,) laid off in town lots, called "Kankakee."

Also, those certain lots, pieces, or parcels of land situate, lying, and being in the town of "Canal Port," in the county of Cook, and State of Illinois, known and designated on the plat of said town, as on file in the recorder's office in said county, to wit: Lots five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) in—[marginal note on page 24, the following words appear in the decree as entered upon the court journal, but are omitted in the judgment record, to wit: "Block eighteen, (18;) lots five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) in" W. H. B., clerk.]—block twenty-four, (24;) lots one, (1,) two, (2,) three, (3,) four, (4,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block twenty-six, (26;) lots one, (1,) three (3,) and thirteen, (13,) in block twenty-eight, (28;) lots eight, (8,) six, (6,) four, (4,) two, (2,) in block sixty-eight, (68;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block seventy, (70;) lots one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block
51 seventy-two, (72;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block seventy-seven, (77;) lots five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) in block eighty, (80;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block eighty-two, (82;) lots five (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) in block eighty-four, (84;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) in block eighty-six, ; lots one, (1,) five, (5,) fifteen, (15,) sixteen, (16,) in block twenty-nine, (29;) lots two, (2,) three, (3,) four, (4,) in block eighty-eight, (88;) lots six, (6,) seven, (7,) fifteen, (15,) sixteen, (16,) in block thirty, (30;) lots four, (4,) six, (6,) eleven, (11,) twelve, in block thirty-one, (31;) lots three, (3,) seven, (7,) in block thirty-two, (32;) lots five, (5,) eight, (8,) ten, (10,) in block thirty-three, (33;) lots three, (3,) four, (4,) eleven, (11,) sixteen, (16,) in block thirty-four, (34;) lots five, (5,) six, (6,) ten, (10,) eleven, (11,) in block thirty-five. (35;) lots two, (2,) four, (4,) five, (5,) twelve, (12,) in block thirty-six, (36;) lots one, (1,) eleven, (11,) twelve, (12,) fifteen, (15,) in block thirty-seven, (37;) lots two, (2,) three, (3,) four, (4,) fourteen, (14,) in block thirty-eight, (38;) lots one, (1,) seven, (7,) fourteen, (14,) fifteen, (15,) in block thirty-nine, (39;) lots two, (2,) six, (6,) seven, (7,) eleven, (11,) in block forty, (40;) lots eight, (8,) ten, (10,) eleven, (11,) twelve, in block forty-one, (41;) lots two, (2,) five, (5,) eight, (8,) twelve, (12,) in block forty-two, (42;) lots three,
52 (3,) five, (5,) seven, (7,) nine, (9,) in block forty-three, (43;) lots seven, (7,) twelve, (12,) thirteen, (13,) sixteen, (16,) in block forty-four, (44;) lots three, (3,) four, (4,) fifteen, (15,) seventeen, (17,) in block forty-six, (46;) lots two, (2,) six, (6,) eleven, (11,) thirteen, (13,) in block forty-seven, (47;) lots two, (2,) three, (3,) ten, (10,) eleven, (11,) in block forty-eight, (48;) lots one, (1,) twelve, (12,) fourteen, (14,) in block fifty, (50;) lots six, (6,) eight, (8,) in block fifty-one, (51;) lots seven, (7,) eight, (8,) in block fifty-two, (52;) lots one, (1,) four, (4,) in block fifty-three, (53;) lots five, (5,) seven, (7,) in block fifty-four, (54;) lots one, (1,) three, (3,) in block fifty-five, (55;) lots four, (4,) seven, (7,) in block fifty-six, (56;) lots one, (1,) four, (4,) in block fifty-eight, (58;) lots four, (4,) six, (6,) eight, (8,) in block fifty-nine, (59;) lots five, (5,) seven, (7,) eight, (8,) ten, (10,) in block (60;) lots three, (3,) four, (4,) thirteen, (13,) fourteen, (14,) in block sixty-one, (61;) lots one, (1,) two, (2,) four, (4,) in block sixty-two, (62;) lots four, (4,) seven, (7,) nine, (9,) ten, (10,) in block sixty-three, (63;) lots one, (1,) two, (2,) fifteen, (15,) sixteen, (16,) in

block sixty-four, (64;) lots six, (6,) thirteen, (13,) fourteen, (14,) fifteen, (15,) in block sixty-five, (65;) lots four, (4,) thirteen, (13,) fifteen, (15,) sixteen, (16,) in block sixty-six, (66;) lots five, (5,) seven, (7,) eleven, (11,) twelve, (12,) in block sixty-seven, (67,) together with all and singular
53 the buildings and improvements, ways, woods, waters, water-courses, right, liberties, privileges, hereditaments, and appurtenances whatsoever thereto belonging or in any wise appertaining, and the reversion and remainder, rents, issues, and profits thereof; and that the said master execute and deliver to the purchaser or purchasers thereof a deed or deeds of the said premises, and that he put the purchaser or purchasers thereof in possession of the same. And it is further ordered, adjudged, and decreed, that, out of the moneys arising from the sale of said premises above described, the said master pay the costs of this suit, and that he pay over to the said complainants the said sum of sixty-six thousand eight hundred and fifty-seven dollars & eighteen cents, ($66,857 18,) and the interest thereon from the day of the date of such sale, at the rate of twelve per cent. per annum; and that he bring the balance of the purchase money, if any, into court, and that he report his proceedings herein at the next term of this court.

This day, to wit, the sixth day of June, in the year of our Lord one thousand eight hundred and forty-two, come the said complainants, by Justin Butterfield, their attorney, and on his motion it is ordered and adjudged by the court that the decree heretofore entered in this cause at the June term, one thousand eight hundred and forty-one, be made final and absolute.

54 This day, to wit, the nineteenth day of June, in the year of our Lord one thousand eight hundred and forty-three, come the said complainants, by J. Butterfield, their solicitor, and file the report of sale of George A. O. Beaumont, a master appointed in this cause, viz:

In pursuance of a decretal order of the circuit court of the United States for the district of Illinois, made in the above cause by said court at the June term thereof, A. D. 1842, by which it was, among other things, ordered, adjudged, and decreed, that all and singular the mortgaged premises set forth and described in the bill of complaint be sold to the highest bidder, by and under the direction of a master of said court, he being empowered to make such sale, the said master giving sixty days' notice of sale in the several counties where said premises are situated; together with all and singular the buildings, improvements, ways, woods, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof. And that the said master execute and deliver to the purchaser or purchasers thereof a deed or deeds of the said premises, and that he put the purchaser or purchasers thereof in the possesion of the same.

And it was further ordered, adjudged, and decreed that out of
55 the moneys arising from the sale of said premises, the said master pay the costs of said suit and that he pay over to said complainant the sum of sixty-six thousand eight hundred and fifty-seven dollars and eighteen cents, and the interest thereon from the date of said decree to the day of such sale, at the rate of twelve per centum per annum, and that he bring the balance of the purchase money (if any) into court, and that report his proceedings therein, at the next term of said court.

By virtue of said decree therefore, I, Geo. A. O. Beaumont, a master in chancery of said court, do respectfully report that I advertised the said premises by putting up three notices of the time and place of said sale, in each of the counties where said lands were situate, and the advertizements contained a brief description of the premises to be sold, setting forth that the sale would take place at the City Hotel, in the city of Chicago, in said district, on the 20th day of April, A. D. 1843, (the copy of said decree not having come to me in time to make the sale and report thereon at the term of court in said decree directed) a copy of which advertizement is filed herewith.

56 And I do further report that I did not advertize the property mentioned in said bill and decree other than that mentioned in said advertizement, by direction of the complainants' attorney & solicitor, the mortgagor being found to have no good title *and* the remainder of said lands. And further, that I caused the said lands to be advertized in the Chicago Express, a public newspaper published in said district, more than sixty days before the said day of sale, according to the rules of said court.

And I do further certify that I did, on the said twentieth day of April, at the place appointed, offer for sale a part of the above-described premises set forth below, for which the United States of America, by Justin Butterfield, esq., att'y & sol. for the United States, bid as follows, the same being appraised as aforesaid:

For the north half and the southwest quarter of section four, township thirty-five, range nine east of the third p. m., (N. ½ & S. W. ¼ sec. 4, T. 35 N., R. 9 p. m.,) containing four hundred and eighty (480) acres in Will C'y, Ill's, the sum of five hundred and fifty dollars, ($550.)

For section eighteen, township thirty-five N., R. nine east third p. m., (sec. 18, T. 35 N., R. 9 E. 3d p. m.,) cont'g 561.97 acres, the sum of five hundred and and sixty-two dollars, ($562.)

57 For the west half of sec. eight in the same township and range, (W. ½ sec. 8, T. 35 N., R. 9 E. 3d p. m.,) cont'g 320 acres, the sum of three hundred and twenty-one dollars, ($321.)

All of which lands are in Will County, Ill's.

For section twenty-six, township thirty-four N., R. seven east the third p. m., (sec. 26, T. 34 N., R. 7 E. 3d p. m.,) cont'g 640 acres, the sum of six hundred and forty-one dollars, ($641,) in Grundy C'y, Ill's.

For the west half of the southeast quarter and the east half of the northeast quarter of section thirteen, township thirty-three N., R. 8 east of the third p. m., (W. ½ S. E. ¼ & E. ½ of N. E. ¼, sec. 13, T. 33 N., R. 8 E. 3d p. m.,) cont'g in all 160 acres, eighty dollars; same county.

For the south half of section twenty-four, same township and range as the last, (S. ½ sec. 27, T. 33 N., R. 8 E. 3d p. m.,) cont'g 320 acres, same c'y, one hundred and sixty dollars, ($160.)

For the east half of the northwest quarter of section twenty-eight, township thirty-five N., R. six east of the 3d p. m., (east ½ N. W. sec. 28, T. 35 N., R. 6 E. 3d p. m.,) cont'g 80 acres, sixty dollars; the same being in Kendall C'y, Ill's.

58 For the northeast quarter of section twenty-three, township thirty-five north, range eight east, &c., 3d p. m., (N. E. ¼ sec. 23, T. 35 N., R. 8 E. 3d p. m.) cont'g 160, in same county, one hundred and sixty dollars, ($160.)

For the west half of the southwest quarter of section twenty-eight, township thirty-six N., R. 9 east, (W. ½ S. W. ¼ S. 28, T. 36 N., R. 9 E. 3d p. m.,) cont'g 80 acres, in Will County, the sum of eighty-one dollars, ($81.)

For the north half of section eighteen, township thirty-seven N., R. thirteen east of the third p. m., (N. ½ S. 18, T. 37 N., R. 13 E. 3d p. m.,) cont'g 305 $\frac{50}{100}$ acres, in Cook County, Ills., one hundred and fifty-two $\frac{75}{100}$ dollars, ($152 75.)

For a part of the south half and northwest quarter of section two, township thirty-three N., R. 8 E. of 3d p. m., (P't of S. ½ & N. W. ¼ S. 2, T. 33 N., R. 8 E. 3d p. m.,) cont'g 60 acres, in Grundy C'y, Ills., sixty dollars, ($60.)

The whole of said sale amounting to two thousand nine hundred and twenty-seven dollars and seventy-five cents; and all of said lands being bid in by the United States of America, by their said solicitor, at two-thirds or more of its appraised value, except the two parcels last mentioned, which, by the direction of the said complainants' solic'tor, was not appraised, and the remainder of the premises by his direction were not sold, there being no good title in said mortgagor.

59 And I do further certify that the above were the highest and best bids offered for said property, and that I have executed to the said complainant a deed of conveyance for said lands which are unoccupied agreeably to the said order of said decree, and have handed to the said solicitor a bill of my costs, which appear herewith.

GEO. A. O. BEAUMONT,
Com'r, &c.

U. S. cir't c't, dist. of Ills. In chancery.

U. S. OF AMERICA
vs.
J. B. F. RUSSELL ET AL.

Master's Fees.

To pr. cent'g on sale on $200 at 5 per ct	$10 00
" " " " " " 2,727 $\frac{75}{100}$ " $2\frac{1}{2}$ "	68 09
" 320 miles' travel to appraise at $6\frac{1}{4}$ pr. mile	20 00
" p'd appraisers, (9 of them,) at $1 each	9 00
" " advertising in newspaper	8 00
" making deed and acknowledging, &c	5 75
" appointing place of sale, &c	1 00
" report of sale, &c	2 50
	$124 34

And on motion of said complainants, it is ordered that the said report of the said master be confirmed and stand ratified by this court, and the court tax and allow the costs of said master to the sum

60 of one hundred and twenty-four dollars and thirty-four cents.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, hereby certify the foregoing to be a true and correct transcript from the complete judgment record, of all the proceedings had in said court, in the within entitled cause of the United States against John B. F. Russell et al., up to and including the confirmation of the report of the master, filed in said court on the 19th day of June, A. D. 1843, as the same appears of record in my office.

And I further certify that the words noted on the margin of pages 23, & 24 respectively, of this transcript, correctly state the difference between the judgment record and the journal entry of said court in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 25th day of February, A. D. 1858.

[SEAL.] W'M H. BRADLEY, *Clerk.*

61 To the admission of which transcript of record proceeding in said foreclosure suit, the said defendant, by his counsel, then and there objected, because, (among other reasons,) the counsel insisted it did not appear in and by said transcript, that Josiah S. Breese, named as a defendant in said suit, and under whom, the counsel said the defendant claimed title paramount to that of the United States, was ever served with process in said cause or brought into court, or appeared in court as a party defendant, so as to be subject to the jurisdiction of the court in that cause; and further to support said objection, in addition to what appeared upon the record of said cause, as offered by the plaintiff, the defendant called one Seth Paine, as a witness, who, being duly sworn, testified as follows:

Testimony of S. Paine.

I knew J. S. Breese; was a partner of his in Chicago, in 1837 and 1838. He left the State of Illinois in 1839, and went to reside in the city of New York. He was not here in Chicago in 1840. I resided here and continued in business till 1842; did not see Breese here during that time. The dissolution of partnership between Taylor, Breese and Co., occurred in 1839. I bought in and continued till 1842. Breese
62 was not here after 1839. I saw him in New York in 1839. I think he was not here after I commenced business in spring of 1839. I found Breese in business in New York in 1839. Breese has since died.

The defendant, in further support of his objection that said Breese was not served with process in said cause, offered and read in evidence all the files (including the fee bill and summons) and orders in said cause which were not offered and read in evidence by the plaintiff; as follows:

Fee bill.

THE UNITED STATES OF AMERICA
v.
JOHN B. F. RUSSELL, FRANCIS PEYTON, Gurdon S. Hubbard, Josiah S. Breese, Henry L. Fuller, Augustus Garrett, Frederick F. Flaylor, Ashbel Steele, William Teal, Hiram Hugunin, Ebenezer Peck, & Richard J. Hamilton, com'r of school lands for Cook County. } Decree rendered June term, 1841.

63

Ent'g app. comp'ts 16; filing precipe 8	24	
Subpœna, $1 00	1 00	
Filing bill, 8	8	
		1 34

1840. Dec'r term.	Ent'g marshal's retu. on s'bp, 16; filing same, 8	24	
	Doc't'g cause, 16; order for continuance, 33	49	
			79
1841. June term.	" " 16; default, 33	49	
	Filing master's report, 8	8	
			59
	Decree, 29 fols., $6 96; record of cause, 85 fols., $17 00	23 96	
	Copy decree, 29 fol., $5 80; cert & seal, 66	6 46	
			30 42
	Filing same, 8; filing com'r's rep't, 8	16	
	Filing cert. purchase, 8	8	
	Taxing costs & entry, 50; copy 33	83	
	Decree absolute	33	
			1 40
			$34 54
	Docket fee		5 00
	Master's fees, Schuyler Strong		1 75
	Marshal's fees		
	Serving & ret'n'g s'bp., $27 87½		27 87
	A true copy from my costs book		$69 16

JAMES F. OWINGS, *Clk.*

(Endorsed:) Filed December 23d, 1841. Owings, c'k.

64 *Subpœna.*

UNITED STATES OF AMERICA,
District of Illinois, set:

The United States of America to the marshal of the district of Illinois, greeting:

We command you that you summon John B. F. Russell, Francis Peyton, Gurdon S. Hubbard, Josiah S. Breese, Henry L. Tuller, Augustus Garrett, Frederick F. Flaylor, Ashbel Steele, William Teal, Hiram Hugunin, Daniel Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioner of school lands for Cook County, if they be found in your district, to be and appear before our judges of our circuit court of the United States for the district of Illinois at the next term thereof, to be holden at Springfield, in the district aforesaid, on the first Monday of December next, to answer to a bill in chancery filed in said court against them by the United States of America. And this they are in no wise to omit under the penalty of what the law directs for a contempt of court.

And have you then there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this first day of September, in the year of our Lord one thousand eight
65 hundred and forty, and of our independence the sixty-fifth year.

[SEAL.] JAMES F. OWINGS, *Clerk.*

Returnable December term, A. D. 1840.

OWINGS, *Clk.*

Executed the within by reading it to, and leaving copys with, John B. F. Russell, Gurdon S. Hubbard, Augustus Garrett, Ashbel Steel, Hiram Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioner of

school lands for Cook County, this 2nd day of November, A. D. 1840, the others not found in this district.

HARRY WILTON,
U. S. Marshal.
By S. W. SHERMAN,
Dep't. Marshal.

(Endorsed:) Filed 24th Nov., 1840. Owings, c'k.

66 The foregoing testimony of Seth Paine was admitted under objection by plaintiff's counsel and subject to the opinion of the court as to its competency, and the court being of opinion that the said transcript was admissible in evidence overruled the objection of the defendant's counsel; to which opinion of the court the defendant then and there excepted.

Beaumont to U. S.

The plaintiff, further to maintain the issue on his part, offered and read in evidence a deed from G. A. O. Beaumont to The United States, dated April 21, 1843. Rec. Kendall Co., July 12, 1844, and in Will Co., Feb. 5, 1844.

This indenture, made the twenty-first day of April, in the year of our Lord one thousand eight hundred and forty-three, between George A. O. Beaumont, one of the masters in chancery of the United States circuit court for the district of Illinois, party of the first part, and the United States of America, party of the second part:

Whereas, at the June term of the United States circuit court for the district of Illnois, in the year one thousand eight hundred and forty-one, in chancery sitting, it was, by said court, among other things, or-
67 dered, adjudged, and decreed in a certain case then depending in said court, wherein the United States of America was complainant and John B. F. Russell, Francis Peyton, Gurdon S. Hubbard, Josiah S. Breese, Henry L. Tuller, Augustus Garrett, Frederick F. Flayler, Ashbell Steel, William Teal, Hiram Hugunin, Ebenezer Peck, & Richard J. Hamilton, commissioner of school lands for Cook County, were defendants, that the mortgaged premises set forth in said bill of complaint in said cause, and which are hereinafter described, be sold to the highest bidder by and under the direction of one of the masters of said court, he being empowered to make such sale, the said master giving sixty days' notice of such sale by posting up three written notices of sale in the several counties where said premises are situated, and that the said master execute and deliver to the purchaser or purchasers thereof a deed or deeds of said premises.

And whereas the said George A. O. Beaumont, master in chancery as aforesaid, and party of the first part to these presents, did, in pursuance of the above-recited order and decree and the rules of said court, after advertising said premises for sale in a public newspaper in said district, and putting up the notices as above required more than sixty days before said sale, and causing said premises to be appraised as required by the rules of said court, on the twentieth and
68 twenty-first day of April, A. D. one thousand eight hundred and forty-three, sell at public auction, all and singular the said mortgaged premises hereinafter particularly described, at which sale the same were struck off to the United States of America, party of the second part to

these presents, for the sum of two thousand nine hundred and twenty-seven dollars and seventy-five cents, that being the highest and best bid for the same.

Now this indenture witnesseth that the said George A. O. Beaumont, master in chancery as aforesaid, and party of the first part to these presents, in order to carry into effect the said sale made in pursuance of the decree of the said court above-recited, and by virtue of the law in such case made and provided, and in consideration of the premises and of the said sum of two thousand nine hundred and twenty-seven dollars and seventy-five cents, paid at the time of the execution hereof by the said party of the second part to the said George A. O. Beaumont, master in chancery as aforesaid, the receipt whereof he doth hereby acknowledge, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey,
69 and confirm unto the said party of the second part, and assigns forever, all those certain pieces, parcels, or lots of land situate, lying, and being in the county of Will, & State and district of Illinois aforesaid, known and designated as being the north half and the southwest quarter of section number four, (4,) township number thirty-five, (35,) range number nine (9) east of the third principal meridian, containing four hundred and eighty (480) acres.

Also, section number eighteen, (18,) in township number thirty-five, (35,) north of range number nine (9) east of the third principal meridian, containing five hundred & sixty-one & ninety-four hundre'ths (561 $\frac{94}{100}$th) acres. Also, *of* the west half of section number eight, (8,) in the same township and range, containing three hundred and twenty (320) acres.

Also, the following-described lot, piece, or parcel of land situate, lying, and being in the county of Will aforesaid, known and designated as being the west half of the southwest quarter of section number twenty-eight, (28,) in township number thirty-six north, of range number nine (9,) containing eighty (80) acres. Also, the following-described lots, pieces or parcels of land situate, lying, and being in the county of Grundy, and State and district aforesaid, known and designated as being section number twenty-six, (26,) in township number thirty-four (34) north, of
70 range number seven (7) east of the third principal meridian, containing six hundred and forty (640) acres. Also, the west half of the southeast quarter and the east half of the northeast quarter of section number, (13,) in township number thirty-three (33) north, of range number eight (8) east of the third principal meridian, containing in all one hundred and sixty (160) acres. Also, the south half of section number twenty-four, (24,) & same township and range, containing three hundred & twenty (320) acres. Also, a part of the south half and northwest quarter of section number two, (2,) township number thirty-three (33) north, of range number eight (8) east of the third principal meridian, containing sixty (60) acres. Also, the east half of the northwest quarter of section number twenty-eight, (28,) township number thirty-five (35) north, of range number six (6) east of the third principal meridian, containing eighty (80) acres. Also, the northeast quarter of section number twenty three, (23,) in township number thirty-five (35) north, of range number eight (8) east of the third principal meridian, containing one hundred & sixty (160) acres. Also, the north half of section number eighteen, (18,) in township number thirty-seven (37) north, of range number thirteen (13) east of the
71 third principal meridian, containing three hundred and five & fifty-hundredths (305 $\frac{50}{100}$) acres, said last-mentioned tract being situate in the county of Cook, & State & district of Illinois aforesaid.

Together with all and singular the rights, members, privileges, her e

ditaments, and appurtenances belonging to the same, or in anywise appertaining:

To have and to hold all and singular the said premises above-mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said party of the second part, and assigns, to the only proper use, benefit, and behoof of the said party of the second part and assigns forever.

In witness whereof the said George A. O. Beaumont, master in chancery as aforesaid, hath hereto set his hand and seal the day and year first above written.

GEO. A. O. BEAUMONT. [SEAL.]
Master in Ch'y, &c.

Sealed and delivered in presence of—
MARK SKINNER.

STATE OF ILLINOIS, *Cook County:*

Personally appeared before me, the clerk of the county commissioners' court in and for said county, George A. O. Beaumont, master
72 in chancery for the district court of the United States for the district of Illinois, who declared he signed, sealed, & delivered the above deed freely & voluntarily, for the uses & purposes therein set forth.

In testimony whereof I have hereunto set my hand & the seal of said county, this 27th day of April, A. D. 1843.

[SEAL.] GEO. DAVIS, *Clk.*

STATE OF ILLINOIS, *Kendall County, ss:*

I hereby certify that this deed was filed in this office for record July 12th, 1844, at six o'clock p. m., and duly recorded in book B, of deeds, page 216–'17.

Recorder's Office, Yorkville, July 13th, 1844.

NORMAN DODGE, *Recorder.*

STATE OF ILLINOIS, *Will County:*

On the 5th day of February, 1844, the within deed was left for record, and duly recorded in book H, pages 292–'3 & '4.

4835.] ROB'T C. DUNCAN,
Recorder.

Filed Febr'y 5th, 1844.

73 STATE OF ILLINOIS, *Grundy County, ss:*

RECORDER'S OFFICE,
Morris, March 18th, 1844.

I hereby certify that the foregoing instrument was filed for record on the 15th inst., at 8 o'clock a. m., and duly recorded this day in book A of deeds, pages 330–'1–'2.

L. W. CLAYPOOL, *Recorder.*

STATE OF ILLINOIS, *Cook County, ss:*

On the 16th day of October, A. D. 1843, the within deed was left for record, and duly recorded in book 9 of deeds, page 547.

W'M B. EGAN, *Recorder.*

The plaintiff also offered the confirmation of the master's report, June 19, 1843, which is as follows:

Confirmation of master's report.

MONDAY, *June* 19, 1843.

Court met pursuant to adjournment. Present the Hon'l Nathaniel Pope, judge.

In chancery.

THE UNITED STATES OF AMERICA
vs.
JOHN B. F. RUSSELL & OTHERS. } In chancery.

74 And now at this day come the said complainants, by J. Butterfield, their solicitor, and file the report of sale of George A. O. Beaumont, a master appointed in this cause, and on motion of said complainants it is ordered that the said report of the said master be confirmed and stand ratified by this court, and the court tax and allow the costs of said master to the sum of one hundred and twenty-four dollars and thirty-four cents.

Plaintiff next offered in evidence a deed from the Solicitor of the Treasury of the United States to W'm W. Corcoran, dated Dec. 28, 1847. rec. Kendall Co., July 27, 1848.

To the admission of this deed the defendant, by his counsel, then and there objected, on the ground that it did not appear thus far in the proceedings in this cause, that the United States had any title to the premises in controversy, except as mortgagee, and that as said deed did not purport to assign or convey to the grantee any part or portion of the mortgage debt, and, as the defendant claimed, it did not appear that said mortgage had been foreclosed as against Josiah S. Breese, the owner of the equity of redemption of the premises mortgaged
75 by Russell to the United States, therefore said deed from the United States to said Corcoran did not pass to the grantee any legal title or estate to the premises in controversy.

But the court overruled said objections of the defendant, and admitted said deed to be read in evidence in support of the plaintiff's title; to which ruling and decision of the court, the defendant, by his counsel, then and there excepted.

Said deed is as follows:

U. S. to Corcoran.

In consideration of the sum of four hundred and twenty-five $\frac{60}{100}$ dollars paid to the United States by William W. Corcoran, of the city of Washington, in the county of Washington, and District of Columbia, the United States, by Ransom H. Gillet, Solicitor of the Treasury, in pursuance of the authority conferred on him by virtue of an act of Congress entitled "An act to provide for the appointment of a Solicitor of the Treasury," approved May 29th, 1830, hereby release, sell, assign, transfer, convey, and quit-claim unto the said William W. Corcoran, his heirs and assigns, all the right, title, interest, claim and demand of the United States, in law and in equity, in possession, reversion, or remainder, of, in, and to the following-described property, to wit:
76 All those certain pieces or parcels of land situate in the county of Grundy, and State of Illinois, being section number twenty-six, (26,) in township thirty-four (34) north, range seven

east of third principal meridian, containing six hundred & forty acres; also, the south half of section twenty-four, (24,) in township thirty-three (33) north, of range eight east of the 3d principal meridian, containing three hundred and twenty acres; and the northeast quarter of section twenty-three, (23,) in township thirty-five (35) north, of range eight east of the third principal meridian, containing one hundred and sixty acres, making together eleven hundred and twenty acres, being a part of the property conveyed to the United States of America by George A. O. Beaumont, master in chancery, under a decree of the circuit court of the United States for the district of Illinois, against John B. F. Russell & others, by deed bearing date the 21st of April, 1843, recorded in the registry of deeds for Grundy County aforesaid, liber A, folios 330–'1, '2, & '3.

To have and to hold the same to his use, and to his heirs and assigns forever, free of any claim on the part of the United States.

In witness whereof the said Solicitor of the Treasury hath, in behalf of the said United States, set his hand and affixed his seal the
77 twenty-eighth day of December, in the year one thousand eight hundred and forty-seven.

R. H. GILLET, [SEAL.]
Solicitor of the Treasury.

Signed, sealed, and delivered in presence of—
B. F. PLEASANTS.
ISAAC ANGNEY.

OFFICE OF THE SECRETARY OF THE TREASURY,
December 28th, 1847.

The above sale is approved.

M. C. YANCY,
Acting Secretary.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Be it remembered that, on the twenty-second day of April, eighteen hundred and forty-eight, before me, the subscriber, a commissioner in and for said district, appointed by the governor of the State of Illinois, to take the acknowledgement and proof of deeds and other writings under seal, to be used and recorded in the said State of Illinois, and to administer oaths and affirmations, appeared Ransom H. Gillet, Solicitor of the Treasury, who is personally well known to me to be the individual described in and who executed the within instrument and acknowledged to me that he had executed the same by the authority and for the
78 uses and purposes therein mentioned.

Given under my hand and and seal.

[SEAL.] CHARLES DE SELDING,
Commissioner.

STATE OF ILLINOIS, *Kendall County, ss:*

I, M. A. Fenton, recorder in and for said county, do certify that this deed was filed for record July 27th, A. D. 1848, at 4 o'clock p. m., and duly recorded in book E, page 263.

Recorder's office, Oswego, July 27, A. D. 1848.

M. A. FENTON, *Recorder.*

STATE OF ILLINOIS, *Grundy County, ss:*

I, Patrick Kelly, recorder in and for said county, do hereby certify that the within deed was filed for record on the 21st day of July, A. D. 1848, at 9 o'clock, a. m., and duly recorded in book C of deeds, page 334.

PATRICK KELLY, *Recorder.*

(Endorsed:) Filed July 21st, 1848, at 9 o'clock a. m.

79 The plaintiffs next offered in evidence a deed from W'm W Corcoran to W'm B. Morris, the plaintiff in this case, dated Dec. 20, 1867, rec. Kendall Co., March 13, 1868, which is as follows:

W. W. Corcoran to W'm B. Morris.

This indenture, made this twentieth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by and between William W. Corcoran, of the city of Washington, and District of Columbia, of the first part, and William B. Morris, of Charlestown, Massachusetts, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five hundred dollars, current money of the United States, to him in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these presents doth grant, bargain, and sell, alien, enfeoff, and convey, unto the said party of the second part, his heirs and assigns, the north-east quarter of section twenty-three, (23,) township thirty-five (35) north,
of range eight (8) east, situated in Kendall County, State of Illinois,
80 together with the improvement, privileges, appurtenances, and other hereditaments, to the same belonging and appertaining, and all the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of the said party of the first part in and to the same. To have and to hold the same, with the improvements, et cetera, as aforesaid, unto him, the said party of the second part, his heirs and assigns, to their sole use, benefit, and behoof, forever.

And the said William W. Corcoran, for himself, his heirs, executors, and administrators, hereby covenants and agrees with the said party of the second part, his heirs and assigns, to warrant and defend the land and premises, with the improvements, et cetera, as aforesaid, unto him, the said party of the second part, his heirs and assigns, against himself, the said William W. Corcoran, his heirs and assigns, and against all other persons lawfully claiming or to claim the same, or any part thereof, by, through, or under him, them, and any every of them; and upon this further covenant, to make, execute, and deliver, at any time hereafter, at the reasonable request and cost of the said party of the second
part, his heirs and assigns, such other and further deeds and
81 assurances in law as by them or their counsel may be devised or required the more fully and effectually to vest in the said party of the second part, his heirs and assigns, the title and estate of the said party of the first part in and to the property and other hereditaments hereby intended to be conveyed.

In testimony whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year first hereinbefore written.

W. W. CORCORAN. [SEAL.]

Signed, sealed, and delivered, being first duly stamped, ($\frac{50}{100}$) in presence of—

A. HYDE.
ARTHUR T. BRICE.

[50-cent rev. stamp cancelled.]

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Anthony Hyde, notary public in and for said county, do hereby certify that William W. Corcoran, party to a certain deed bearing date on the twentieth day of December, A. D. eighteen hundred and sixty-seven, and hereto annexed, personally appeared before me, in my county aforesaid, the said William W. Corcoran, being personally well known
82 to me as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this fourth day of March, A. D. eighteen hundred and sixty-eight.

[NOTARIAL SEAL.] A. HYDE,
Notary Public.

As commissioner of the State of Illinois, in and for the District of Columbia, I also certify that said William W. Corcoran acknowledged the foregoing deed before me on the said 4th March, 1868, according to the above notarial form.

In testimoniam veritatis.

[SEAL. A. HYDE,
Commissioner of Illinois for the District of Columbia.

STATE OF ILLINOIS, *Kendall County, ss:*

This instrument was filed for record the 13th day of March, A. D. 1868, at 5 o'clock p. m., and duly recorded in book No. 27, on pages 264 & 265.

A. M. HOBBS, *Recorder.*

83 The plaintiff here rested.

It was then agreed between the parties that, in 1837 and until 1841, the premises in controversy were in La Salle County, and that Kendal County, in which the premises are now situated, was formed out of La Salle County in 1841, under the act of the general assembly of Illinois, approved February 19, 1841.

The defendants then offered in evidence a transcript of the record of a deed from J. B. F. Russell to Josiah S. Breese, dated May 30, 1837; rec. Cook Co. June 10, 1837; and in Will Co. June 8, 1837; and in Kendall Co. May 10, 1864; which is as follows:

Russell to Breese.

This indenture, made this thirtieth day of May, in the year of our Lord one thousand eight hundred and thirty-seven, between John B. F. Russell and Cornelia, his wife, of the city of Chicago, and State of Illinois, parties of the first part, and Josiah S. Breese, of the same city & State aforesaid, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of two thousand dollars, in hand paid by the said party of the second
84 part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, and to his heirs & assigns forever, all of the following-described pieces or parcels of land, to wit: The northeast fractional quarter of section No. 26, township No. 40 north, of range No. 12 east of the third principal meridian, containing 158 $\frac{76}{100}$ acres; also, the southeast quarter of section No. 4, in township No. 33 north, of range No. 9 east of the third principal meridian, containing 160 acres; also, fractional section number 34, in township number 40 north, of range No. 12 east of the third principal meridian, containing 508 $\frac{81}{100}$ acres; also, the south half of section No. 24, in township No. 33 north, of range No. 8 east of the third principal meridian, containing 320 acres; also, the east half of the northeast quarter of section number 13, in township 33 north, of range No. 8 east of the third principal meridian, containing 160 acres; also, the northeast quarter of section No. 23, in township No. 35 north, of range No. 8 east of the third principal meridian, containing 160 acres; also, section No. 26, in township No. 34 north, of range No. 7 east of the third principal meridian, containing 640 acres; which said lands are situated in the
85 State of Illinois. Also, the west half of the southwest quarter of section number 28, in township No. 36 north, of range No. 9 east, of the third principal meridian, containing 80 acres, situate in the State aforesaid.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances: To have and to hold the said premises above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said John B. F. Russell, for himself, his heirs, executors, and administrators, do covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that, at the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and hath good right, full power, & lawful authority to grant, bargain, sell, and convey the
86 same, in manner and form aforesaid, and that the same are free & clear of all encumbrances of what kind and nature soever, and that the above-bargained premises, in the quiet & peaceable possession of the said party of the second part, his heirs & assigns, against all & every person & persons lawfully claiming or to claim the whole or any part thereof, will forever warrant and defend.

In witness whereof the said party of the first part hath hereunto set their hands & seals the day and year first above written.

J. B. F. RUSSELL. [SEAL.]
CORNELIA RUSSELL. [SEAL.]

Sealed & delivered in presence of—
WM V. SMITH.

STATE OF ILLINOIS, *Cook County, ss:*

I, W'm V. Smith, in & for the county of Cook, in the State aforesaid, do hereby certify that John B. F. Russell and Cornelia, wife of said John B. F. Russell, personally known to me as the same persons whose names *is* subscribed to the foregoing deed, appeared before me this day in person, and acknowledged that they signed, sealed, & delivered the said deed as their free & voluntary act, for the uses and purposes therein set forth.

And the said Cornelia, wife of the said John B. F., being by
87 me examined separate and apart and out of the hearing of her husband, and the contents of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands & tenements therein mentioned, without compulsion of her said husband, and that she doth not wish to retract the same.

Given under my hand and seal, at my office in Chicago, this second day of June, A. D. 1837.

W'M V. SMITH, *J. P.* [SEAL.]

STATE OF ILLINOIS, *Cook County, ss:*

I, Richard J. Hamilton, clerk of the commissioners' court of Cook County, in the State aforesaid, do hereby certify that W'm V. Smith, esq'r, whose name is subscribed to the certificate of acknowledgment or proof of the annexed deed of conveyance, and thereon written, is, and was at the time of taking such acknowledgment or proof, an acting justice of the peace in for said county, duly commissioned and sworn, and authorized to take the same, and that full faith and credit are due, and of right should be given to all his official acts as such justice.

In testimony whereof I have hereunto set my hand and affixed
88 the seal of my office this sixth day of June, A. D. 1837.

[L. S.] RICHARD J. HAMILTON, *Clerk.* [SEAL.]

Recorded this 10th day of June, A. D. 1837.

GEO. H. WOODRUFF,
Recorder.

STATE OF ILLINOIS, *County of Will, ss:*

I, Benjamin F. Russell, clerk of the circuit court and ex-officio recorder in & for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office, on the eighth day of June, A. D. 1837, and recorded in book "C," of records, on pages 220 & 221, the parties to the same being John B. F. Russell and Cornelia Russell, his wife, of the first part, and Josiah S. Breese, of the second part.

In testimony whereof I have hereunto set my hand and affixed the seal our said court, at Joliet, this 29th day of March, A. D. 1861.

B. F. RUSSELL,
Clerk of the Circuit Court & Ex-officio Recorder of Will County.

STATE OF ILLINOIS, *Kendall County, ss:*

89 This instrument was filed for record on the 10th day of May, A. D. 1864, at the hour of 1 o'clock, p. m., and duly recorded in book Z, pages 144 & 145.

GEO. M. HOLLINBARCK, *Recorder.*

STATE OF ILLINOIS, *Kendall County, ss:*

I, Albert M. Hobbs, clerk of the circuit court in and for said county and State, and ex-officio the recorder thereof, do hereby certify the foregoing to be a true and correct copy of the record of a certain deed recorded in my office, in book "Z," on pages 144 & 145, the parties thereto being John B. F. Russell and Cornelia Russell, his wife, of the first part, and Josiah S. Breese, of the second part.

Witness my hand and seal of said court at Yorkville, in said county, this 8th day of May, A. D. 1869.

[SEAL.] J. M. HOBBS, *Clerk.*

[5 cts. rev. stamp, cancelled.]

The defendant next offered in evidence a duly certified copy of a decree in bankruptcy against Josiah S. Breese, entered in the district court of the United States for the southern district of New York, dated September 15, 1842, which is as follows:

90 *Decree in bankruptcy.*

The President of the United States of America to all to whom these presents shall come, greeting:

Know ye that we, having inspected the records and files of the circuit court of the United States for the southern district of New York, do find certain paper writings there, remaining of record, in the words and figures following, to wit:

No. 5.

Filed this fifteenth day of September, 1842.

In bankruptcy.

At a district court of the United States of America, held for the southern district of New York, at the city hall of the city of New York, on Thursday, the fifteenth day of September, in the year one thousand eight hundred and forty-two—

Present, Samuel R. Betts, district judge.

IN THE MATTER OF JOSIAH S. BREESE, bankrupt. } Decree of bankruptcy.

Josiah S. Breese, of the city of New York, having on the fifth day of August last past, filed a petition duly verified, praying to be de-
91 clared a bankrupt; and satisfactory proof being made of due publication of notice to all persons interested to appear in court and show cause against said petition, and the court being now moved to grant the prayer of said petition, and no cause being shown to the contrary, and the petition and proof having been inspected and considered by the court, and having been found in conformity with the requirements of the act of Congress, it is thereupon, on motion of Mr. Rich'd H. Browne, of counsel for the petitioner, ordered and decreed by the court, that the said Josiah S. Breese be, and he is hereby, declared and decreed a bankrupt, pursuant to the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

And it is furthermore ordered by the court, that the clerk certify and deliver this decree to William C. H. Waddell, the official or general assignee in bankruptcy, appointed and designated under the rules and regulations of the court.

In bankruptcy.

At a district court of the United States of America, held for the southern district of New York, at the city hall of the city of New
92 York, on Tuesday, the fourth day of January, in the year one thousand eight hundred and forty-two—

Present, Samuel R. Betts, district judge—

Ordered that William Coventry H. Waddell be appointed the official or general assignee, as required by the rules this day adopted in cases arising under the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841.

All of which we have caused by these presents to be exemplified, and the seal of the said district court to be hereunto affixed.

Witness the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the eighty-ninth.

[SEAL.] JNO. T. BETTS, *Clerk.*

I, Samuel R. Betts, judge of the said district court, do hereby certify that the foregoing exemplification is in due form of law.

SAM'L R. BETTS.

[5-ct. rev. stamp, cancelled.]

93 The defendant next offered in evidence copy of a deed from W. H. C. Wadell to Caleb H. Wallace, dated March 23, 1861; rec. in Kendall Co., May 10, 1864, of the premises in controversy, which deed is as follows:

Waddle to Wallace.

Josiah S. Breese. Assignee's deed to Caleb H. Wallace. Filed May 10th, 1864, at 1 p. m.

Whereas, by an order of the district court of the United States of America for the southern district of New York, sitting in bankruptcy throughout the United States, passed on the nineteenth day of September, 1842, duly decreed and declared in the words and figures following, to wit:

"In bankruptcy. At a district court of the United States of America, held for the southern district of New York, at the city hall of the city of New York, on Thursday, the fifteenth day of September, in the year one thousand eight hundred and forty-two, present, Samuel R. Betts, district judge; Josiah S. Breese, of the city of New York, clerk, having, on the fifth day of August last past, filed a petition, duly verified, praying to be declared a bankrupt, and satisfactory proof being made
94 of due publication of notice to all persons interested to appear in court and shew cause against said petition; and no cause being shown to the contrary, and the petition and proofs having been inspected and considered by the court, and having been found in conformity with

the act of Congress, it is therefore, on motion of Richard W. Boune, of counsel for petitioner, ordered and decreed by the court, that the said Josiah S. Breese be, and he is hereby, declared and decreed a bankrupt, pursuant to the act of Congress entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' passed August 19th, 1841.

"And it is furthermore ordered by the court that the clerk certify and deliver this decree to William C. H. Waddell, the official or general assignee in bankruptcy, appointed and designated under the rules and regulations of the court.

"I, Charles D. Betts, clerk of the said court, do certify that the above orders and decrees were this day made by the court, and duly entered in the docket of bankrupt proceedings.

"CHARLES D. BETTS,
"*Clerk of the District Court of the United States*
"*for the Southern District of New York.*"

And whereas I, the said W'm Coventry H. Waddell had, before the day of the date of the decree aforesaid, been duly appointed by the circuit & district courts of the United States for the southern
95 district of New York, official or general assignee in bankruptcy, and given a bond pursuance to the said statute, and the rules of said courts respectively, in the following words and figures, to wit:

"At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the city hall, in the city of New York, on Tuesday, the fourth day of January, in the year of our Lord one thousand eight hundred and forty-two—

"Present, the Honorable Smith Thompson, one of the justices of the Supreme Court of the United States of America, and Samuel R. Betts, district judge—

"Ordered that W'm Coventry H. Waddell be appointed the official or general assignee, as required by the rules this day adopted, in cases arising under the act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' passed Aug. 19th, 1841. (A copy.)

"J. W. METCALF, *Clerk.*" [L. S.]

"At a stated term of the district court of the United States of America for the southern district of New York, held at the city hall, in the city of New York, on Tuesday, the 4th day of January, in the year of our Lord one thousand eight hundred and forty-two—

96 "Present, the Honorable Samuel R. Betts, district judge—

"Ordered, That William Coventry H. Waddell the official or general assignee, as required by the rules this day adopted, in cases arising under the act entitled, 'An act to establish a uniform system of bankruptcy throughout he United States,' passed August 19th, 1841. (A copy.)

"CHA'S D. BETTS, *Clerk.*" [L. S.]

And whereas an order has been duly entered in the district court aforesaid authorizing a disposition of the assets hereinafter mentioned:

Now then, know all men by these presents that I, William Coventry H. Waddell, assignee as aforesaid, in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid by Caleb H. Wallace, the receipt whereof I hereby acknowledge, do

hereby grant unto the said Caleb H. Wallace, his heirs and assigns, forever, all the right, title, and interest which the said bankrupt had, and which, by virtue of the decrees and orders above recited, and of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," as aforesaid, become vested in me, and which I have a right to convey, of, in, and to, all the northeast quarter of section thirteen, township thirty-two, range six; also, in the west half of section eighteen, township thirty-two, range seven; also,
97 in N. W. ¼ of section two, and S. ½ section twenty-four, & N. E. ¼ of section thirteen, township thirty-three, range eight; also, in section twenty-six, township thirty-four, range seven.

Also, in the N. E. ¼ of section twenty-three, township thirty-five, range eight east of the third p. m., all in the county of Grundy, and State of Illinois. Also, W. ½ of the S. W. ¼ section twenty-eight, township thirty-six, range nine; also, in the southeast quarter of section four, township thirty-three, range nine, in the same meridian and State of Illinois.

In witness whereof I have hereunto set my hand and seal, this twenty-third day of March, in the year one thousand eight hundred and sixty-one.

W'M COVENTRY H. WADDLE, [SEAL.]
Official or General Assignee.

Sealed and delivered in the presence of—
GORDON FORD.

UNITED STATES OF AMERICA,
State of New York, City & County of New York, ss:

By this public be it remembered that, on this twenty-third day of March, in the year one thousand eight hundred and sixty-one, before me, Gordon L. Ford, a public notary in and for the State of New York, duly commissioned and sworn, appeared W'm Coventry H. Waddell, who is known to me to be the person described in and who exe-
98 cuted the annexed instrument, and acknowledged to me that he had executed the same for the uses and purposes therein expressed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal of office.

GORDON L. LORD,
Notary Public.

A true copy of the original as filed for record March 30th, A. D. 1861, at 5½ o'clock p. m.

JOHN B. DAVIDSON, *Recorder.*

STATE OF ILLINOIS, *Grundy County, ss:*

I, John B. Davidson, clerk of the circuit court, and ex-officio recorder in and for said county and State aforesaid, do hereby certify that the within and foregoing is a full, true, and perfect copy of said assignee's deed as recorded in the recorder's office of Grundy County, in book No. eight of deeds, pages 497, 498, 499, & 300.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 13th day of April, A. D. 1864.

JOHN B. DAVIDSON, *Clerk.*

99 (Endorsed:) Filed May 10, 1864, at 1 p. m.

STATE OF ILLINOIS, *Kendall County, ss:*

I, Albert M. Hobbs, clerk of the circuit court in and for said county & State, and ex-officio the recorder thereof, do hereby certify the above and foregoing to be a true & correct copy of a certain deed, as recorded in my office in book "Z" of deeds on pages 145 & 146.

Witness my hand and seal of said court, at Yorkville, in said county, this eighth day of May, A. D. 1869.

[SEAL.] A. M. HOBBS, *Clerk.*

[5-c't int. rev. stamp cancelled.]

The defendant next offered in evidence a deed from Josiah S. Breese to John D. Brown, dated June 22, 1861; rec. Kendall Co., May 10, 1864, of the premises in controversy, which deed is as follows:

Breese to Brown.

J. S. Breese to J. D. Brown. Filed May 10, 1864, at 1 p. m.

100 This indenture, made the twenty-second day of June, in the one thousand eight hundred and sixty-one, between Josiah S. Breese, of the city of New York, of the first, and John D. Brown, of the city of Chicago, party of the second part, witnesseth:

That the said parties of the first part for and in consideration of the sum of fifteen hundred and twenty-five dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim unto the said party of the second part and to his heirs and assigns forever, all the south half of section twenty-four, (24,) in township thirty-three (33) north, range eight (8) east; all of section twenty-six, (26,) in township thirty-four (34) north, range seven (7) east; the northeast quarter of section twenty-three, (23,) in township thirty-five (35) north, range eight (8) east; and the southeast quarter of section four, (4,) in township thirty-three (33) north, range nine (9) east, all in the State of Illinois.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion & reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest,
101 property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises, and every part and parcel thereof with the appurtenances:

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. S. BREESE. [SEAL.]

Sealed and delivered in the presence of—
EDWIN F. COREY, Jr.

UNITED STATES OF AMERICA,
State of New York, ss:

By this public instrument be it known to all whom the same doth or may in anywise concern, that I, Edwin F. Corey, j'n'r, a notary public, in and for the State of New York, by letters-patent under the great seal of State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that, on the day of the date hereof before me, personally appeared Josiah S. Breese, personally known to me to be the same person described in and who executed the annexed instru-
102 ment in writing, and acknowledged to me that he had voluntarily and freely executed the same for the uses and purposes therein stated.

In testimony whereof I have subscribed my name and caused my official notarial seal to be hereunto affixed the twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-one, in the 85 year of the independence of the United States of America.

[SEAL.] EDWIN F. COREY,
Notary Public of the State of New York.

(Endorsed:) Filed May 10, 1864, 1 p. m.

STATE OF ILLINOIS, *Kendall County, ss:*

I, Albert M. Hobbs, clerk of the circuit court in and for said county & State, and ex-officio the recorder thereof, do hereby certify the above and foregoing to be a true & correct copy of a certain deed as recorded in my office in book "Z" of deeds on page 148.

Witness my hand and seal of said court at Yorkville in said county, this 8th day of May, A. D. 1869.

[SEAL.] A. M. HOBBS, *Clerk.*

[5 c't rev. stamp cancelled.]

103 The defendant next offered in evidence copy of a deed from Caleb H. Wallace to S. W. Hardin, dated Sept. 4, 1861; rec. Kendall Co., April 4, 1864; which deed is as follows:

Wallace to Hardin.

This indenture, made this fourth day of September, in the year of our Lord one thousand eight hundred and sixty-one, between Caleb H. Wallace of Chicago, Illinois, party of the first part, and Seth W. Harding, j'r, of La Salle County, Illinois, of the second part, witnesseth:

That the said party of the first part, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, ha' remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim unto the said party of the second part, heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part ha' in and to the following-described lot, piece, or parcel of land, to wit:

The southeast quarter of section four, (4,) in township thirty-three (33) north, of range nine (9) east of the third (3d) p. m.; and the
104 west half of the southwest quarter of section twenty-eight, (28,) in township thirty-six (36) north, of range nine (9) east of the 3d p. m.; all lying in the county of Will, and state of Illinois; and the

south half of section twenty-four, (24,) and the northeast quarter of section thirteen, (13,) both in township thirty three (33) north, of range eight (8) east of the 3d p. m.; and all of section twenty-six, (26,) in township thirty-four (34) north, of range seven (7) east of the 3d p. m.; all lying in the county of Grundy, and State of Illinois. And the northeast quarter of section twenty-three (23) in township thirty-five (35) north, of range eight (8) east of the 3d p. m., in Kendall County, Illinois:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part hereunto set his hand and seal the day and year above written.

CALEB H. WALLACE. [SEAL.]

105 STATE OF ILLINOIS,
La Salle County, City of La Salle, ss:

I, Willis N. Hitt, a notary public in and for said city, in the State aforesaid, do hereby certify that Caleb H. Wallace, personally known to me as the same person whose name he subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this fourth day of September, A. D. 1861.

[SEAL.] WILLIS M. HITT,
Notary Public.

STATE OF ILLINOIS, *Kendall County, ss:*

The within deed was filed for record in the recorder's office of Kendall County, on the 4th day of April, A. D. 1864, at 1 o'clock p. m., and duly recorded in book Z of deeds, on pages 116 & 117.

STATE OF ILLINOIS, *Kendall County, ss:*

I, Arthur M. Hobbs, clerk of the circuit court, in and for said county and State, and ex-officio the recorder thereof, do hereby certify the within and foregoing to be a true & correct copy of a certain deed as recorded in my office in book "Z" of deeds, on pages 116 & 117.

106 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Yorkville, in said county, this 8th day of May, A. D. 1869.

[SEAL.] A. M. HOBBS, *Clerk.*

[5-c't rev. stamp, cancelled.]

The defendant next offered in evidence copy of a deed from S. W. Hardin to John D. Brown, dated Nov. 19, 1863; rec. Kendall Co. April 4, 1864, of the premises in controversy; whis is as follows:

S. W. Hardin to J. D. Brown.

This indenture, made this nineteeth day of November, in the year of our Lord one thousand eight hundred and sixty-three, between Seth W.

Hardin, j'r, of Chicago, Illinois, party of the first part, and John D. Brown, residence 642 Broadway, New York, party of the second
107 part, witnesseth:

That the said party of the first, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, ha' remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following-described lots, pieces, or parcels of land, to wit:

All of section twenty-six, township thirty-four, range seven, and the south half of section twenty-four, township thirty-three, range eight, both east of the third principal meridian, and lying in the county of Grundy, and State of Illinois; also, the northeast quarter of section twenty-three, township thirty-five north, range eight east of the third principal meridian, lying in the county of Kendall, and State of Illinois, containing in all eleven hundred & twenty acres, more or less, according to Government survey:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise
108 thereunto appertaining; and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

And the said Seth W. Harding, j'r, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State, pertaining to the exemption of homesteads.

And the said party of the first part, for himself, and his heirs, executors, and administrators, do' covenant, promise, and agree, to and with the said party of the second part, his heirs, executors, administrators, and assigns, that he hath not made, done, committed, executed or suffered any act or acts, thing or things, whatsoever, whereby, or by means whereof, the above-mentioned and described premises or any part or parcel thereof, now are, or at any time hereafter, shall or may be impeached, charged or incumbered, in any way or manner whatsoever.

In witness whereof, the said party of the first part hereunto
109 set his hand and seal the day and year above-written.

SETH W. HARDING, J'R. [SEAL.]

STATE OF ILLINOIS,
Cook County, Town of South Chicago, ss:

I, Charles E. Wright, notary public in and for said town, in said county, in the State aforesaid, do hereby certify that , is personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this nineteenth day of November, A. D. 1863.

[SEAL.] CHARLES E. WRIGHT,
Notary Public.

STATE OF ILLINOIS, *Kendall County, ss:*

The within deed was filed for record in the recorder's office of Kendall County, on the 4th day of April, A. D. 1864, at 1 o'clock p. m., and duly recorded in book Z of deeds, on pages 117 & 118.

STATE OF ILLINOIS, *Kendall County, ss:*

I, Albert M. Hobbs, clerk of the circuit court, in and for said county & State, and ex-officio the recorder thereof, do hereby certify the within and foregoing to be a true and correct copy of a certain deed, as
110 recorded in my office, in book "Z" of deeds on pages 117 & 118.

Witness my hand and seal of said court, at Yorkville, in said county, this 8th day of May, A. D. 1869.

[SEAL.] A. M. HOBBS, *Clerk.*

[5-c. int. rev. stamp cancelled.]

The defendant next offered in evidence, deed from John D. Brown to John Dirst, dated Dec. 12, 1864, rec. Kendall Co., Feb. 21, 1865, of the premises in controversy, for the consideration of two thousand dollars named in the deed which is as follows:

Brown to Dirst.

John D. Brown to John Dirst. Filed 21st day of Feb'ry, 1865, at the hour of 2½ o'clock p. m.

[$2 00. J. R. S.]

111 This indenture, made the twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-four, between J. D. Brown, of No. 872 Broadway, in the city of New York, (widower,) party of the first part, and John Dirst, of the county of Kendall, in the State of Illinois, party of the second part, witnesseth:

That the said party of the first, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, to him in hand by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents, do' grant, bargain, sell, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the northeast quarter of section number twenty-three, (23,) in township thirty-five (35) north, of range eight (8) east of the third principal meridian, containing one hundred and sixty acres more or less, and being in the county of Kendall, in the State of Illinois:

Together with all and singular the tenements, hereditaments,
112 and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, in and to the same, and every part and parcel thereof with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefits, and behoof forever.

And the said John D. Brown, for himself and his heirs, executors, and administrators, doth bargain, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said John D. Brown, at the time of the sealing and delivery of these presents, was lawfully seized of a good, absolute, and indefeasible estate of inheritance, in fee-simple of, and in all and singular the above granted, bargained, and described premises, with the appurtenances, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess,
113 and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, his heirs, assigns, or of any other person or persons lawfully claiming, or to claim the same. And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever. And also that the said party of the first part, and his heirs, and all and every other person or persons whatsoever, lawfully and equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore granted premises, by, *form*, or in trust for him, or them, shall and will at any time or times hereafter, upon the reasonable request, and the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause, or procure to be made, done, and executed, all and every such further and other lawful & reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, his heirs and assigns, forever, as by the said second part, his heirs and assigns, or his counsels learned in the laws shall be reasonable devised, advised, or required.

114 And the said John D. Brown and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs, and against all and every person and persons whomsoever, lawfully claiming, or to claim the same, shall and will warrant, & by these presents forever defend.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN D. BROWN. [SEAL.]

Sealed and delivered in the presence of—
EDWIN F. COREY, JR.

UNITED STATES OF AMERICA,
State of New York, ss :

By this public instrument be it known to all whom the same doth or may in any wise concern, that I, Edwin F. Corey, j'n'r, a notary public in and for the State of New York, by letter-patent under the great seal of State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that, on the day of the date hereof, before me personally appeared John D. Brown, personally known to me to
115 be the same person described in and who executed the annexed instrument in writing, and acknowledged to me, that he had vol-

untarily and freely executed the same, for the uses and purposes therein stated.

In testimony whereof I have subscribed my name and caused my official notarial seal to be hereunto affixed, the twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-four, in the 89th year of the independence of the United States of America.

[SEAL] EDWIN F. COREY, JR.,
Notary Public of the State of New York.

(Endorsed:) Filed Feb. 21, 1860, at 2½ p. m.

STATE OF ILLINOIS,
Kendall County, ss:

I, Albert M. Hobbs, clerk of the circuit court in and for said county and State, & ex-officio the recorder thereof, do hereby certify the above and foregoing to be a true and correct copy of a certain deed, as recorded in my office in book "Z" of deeds, on pages 143 & 144.

Witness my hand and seal of said court, at Yorkville, in said county, this 8th day of May, A. D. 1869.

[SEAL.] A. M. HOBBS, *Clerk.*

[5-ct. rev. stamp, cancelled.]

116 It was then agreed that defendant went into possession of the premises in controversy in the winter of 1864–5 under the last mentioned deed, and that he paid the full consideration named in the deed of two thousand dollars.

The defendant here rested.

Depositions of William W. Corcoran and Anthony Hyde, taken March 9th, 1869, at Washington, D. C., before W. W. Danenhower, commissioner, on behalf of plaintiff.

117 *Dep. of Corcoran.*

And the said WILLIAM W. CORCORAN, being carefully examined and cautioned, and duly sworn, saith:

Interrogatory first. What is your name, age, occupation, and place of residence?

My name is William Wilson Corcoran. I am seventy years of age; have no particular occupation; and my residence is in Washington, District of Columbia.

Interrogatory second. Do you know the parties to this suit, or either, and which of them, and how long have you known them respectively?

I know the plaintiff in this suit, William B. Morris, and have known him from his infancy. I do not know John Dirst, the defendant in this cause.

Int. 3. Are you acquainted with the land in controversy in this suit, the northeast quarter of section twenty-three, (23,) township thirty-five (35) north, range eight (8) east, in Kendall Co., Illinois?

I am acquainted with the land in controversy in this suit, viz: the northeast quarter of section twenty-three, (23,) township thirty-
118 five (35) north, of range eight (8) east, in Kendall County, Illinois.

Int. 4. Please state when, from whom, and under what circumstances you purchased said tract of land. State fully.

I purchased said tract, among a large number of others, from the United States, in the year eighteen hundred and forty-seven. This tract and many others were advertised for sale, and proposals invited, by the Solicitor of the Treasury, on behalf of the United States, and they were awarded to me on my bid.

Int. 5. What, if anything, was the consideration of such purchase by you; and state whether the same was by you actually paid, and to whom was payment made?

The consideration, in the aggregate, was over twenty two thousand dollars, which sum was actually paid by me into the United States Treasury, to the credit of the Solicitor thereof. The tract of land above described was included in said aggregate, and on the payment aforesaid I received deeds from the said Solicitor, on the part of the U. States, dated on or about December 28th, 1847; the price paid for this being the same per acre as the residue.

119 Int. 6. Please state whether, at the time you purchased said tract of land of the United States, or paid for the same, or received the deed therefor, you had any notice, or knowledge, or information of any kind, of any adverse claim of title or other claim to said land by any person or persons. State fully and at large, and state when you first received notice or information of such adverse claim.

At the time I made the purchase and received the deed, I had no notice or intimation of any adverse claim on the said tract. On the contrary, I was verbally informed by the chief clerk of the Solicitor's Office, that when the U. States obtained said lands the Solicitor had authorized an agent of the Government to pay and remove all tax and other claims that might be found against them. I paid taxes on this tract, undisturbed, from 1844 to 1864. In the latter year the taxes were paid by some one else; and that was the first intimation I had of an adverse claim.

Int. 7. State whether you ever made or caused to be made, any, and if so, what examination, at any time, as to the condition of the title to said land. When was said examination made, and with what re-

120 sult? If any *any* report as to such state of title was ever made to you in writing, please attach the same, or a copy thereof, to your deposition, properly identified; or if the same is not now in your possession, state what *what* has become of it; what search, if any, you have made for the same, and state the contents or substance thereof.

In the years 1856 and 1857 I sent an agent to examine into the condition of these and other lands, of which examination said agent made a written report, of which, as relates to this particular tract, I annex a copy, marked A.

Int. 8. Please state fully what relation Anthony Hyde sustains to yourself and your business, & how long such relation has existed between you.

Anthony Hyde is my confidential business agent, and has sustained that relation since February, 1848, having in charge the lands here referred to, and all matters relating thereto, under my personal supervision, and in my absence.

Int. 9. Do you know any other fact, matter, or thing of benefit or importance to the plaintiff herein? If yea, state the same fully & at large.

121 I know of nothing more than is stated above. The land in question was purchased by me under a public advertisement, published throughout the country; was awarded to me as the highest bidder therefor, and paid for by me accordingly, and in good faith; and on

which payment the United States, by the Solicitor of the Treasury, conveyed the land to me by deed, which was duly recorded.

And further this deponent saith not.

W. W. CORCORAN.

A.—*Extract from the report of S. L. Sommers, agent of W. W. Corcoran, dated Jan'y* 15, 1857, *eighteen hundred & fifty-seven.*

[Kendall County, N. E. 23, 35 N., 8 E.]

Grantor.	Grantee.	Date.	Record.	Vol.	Page.
United States	J. B. F. Russell	8 Jan., '36	Land office,	Cook	County.
J. B. F. Russell	Francis Peyton, gen'l power of att'y	23 Aug., '37	5 Dec., '37	V.	458
J. B. F. Russell	Solicitor U. S. Treasury, mortg. for the ben'fit of the U. States	21 Dec., '37	30 Ap'l, '38	P of P.	365
122 J. B. F. Russell	Francis Peyton, revocation of power of att'y	16 Aug., 1839	16 Aug., 1839	3	392
Master in chancery	United States by virtue of a decree entered in the U. States circuit court for the district of Illinois, at its June term, 1841, in a cause of the U. States vs. J. B. F. Russell et al	12 July, '44	Co. records.	B.	216
Solicitor of U. S. Treasury.	W. W. Corcoran	28 Dec., '47		E.	263

"Title clear, unless encumbered with Mrs. Russell's dower right. See remarks on the first described tracts."

Note. The "remarks on the first described tracts," are as follows:

"If these lands were patented to J. B. F. Russell, as stated by him, your title is clear, Peyton having no right to sell prior to the power of attorney from Russell." * * "I examined the private papers of Russell submitted to my inspection, but failed to find anything of value. Russell said he loaned the patents to some one, and that he would write for them, and send them to you. I took this as a refusal to give them & other original papers relating to these lands to me."

Russell's wife did not join him in the mortgage to the Sol'r U.
123 S. Treas'y, and, therefore. these lands are subject to her right of dower, should it ever accrue."

"The power of att'y, and its revocation from Peyton, and the mortgage from Russell to the Sol'r U. S. Treasury, are of record in Cook Co., but not in Will Co., which was the proper place of record; but as the mortgage has been foreclosed there is nothing to be apprehended from the omission to record in Will Co."

Note again. The dower right to this tract, and others, was purchased from Mrs. Cornelia Russell, wife of said J. B. F. Russell, for $2,500 cash, and conveyed to W. W. Corcoran, by deed, dated November 16, 1861, and duly recorded.

Dep. A. Hyde.

And the said ANTHONY HYDE, being carefully examined and cautioned and duly sworn, saith:

Interrogatory first. What is your name, age, occupation, and place of residence?

My name is Anthony Hyde; am fifty-eight years of age; am the business agent of W. W. Corcoran, esq.; and my residence is in Georgetown, District of Columbia.

124 Interrogatory second. Do you know the parties to this suit, or either, and which of them, and how long have you known them respectively?

I know the plaintiff, W'm B. Morris, and have known him from his infancy; but have no knowledge whatever of the defendant, John Dirst.

Int. 3. Are you acquainted with the land in controversy in this suit—the northeast quarter of section twenty-three, (23,) township thirty-five (35) north, range eight (8) east, in Kendall Co., Illinois?

I am acquainted with the land in controversy in this suit, viz., the northeast quarter of section twenty-three, (23,) township thirty-five (35) north, of range eight (8) east, in Kendall County, Illinois.

Int. 4. State fully what are your business relations with or to William W. Corcoran, & how long the same have existed.

I am the confidential business agent of W. W. Corcoran, esq., and have been such for over twenty-one years, and as such have had in my charge all the lands he owns in Illinois, and, under his supervision when present, and his directions, general and specific, when absent,
125 have transacted all business connected with said lands.

Int. 5. Please state when you first obtained, or received notice, or knowledge, or information, of any claim of title, or other claim, in or to said tract of land, adverse to said W'm W. Corcoran's title to the same, or to the title of his grantor or grantors?

The first knowledge or intimation I had of any adverse claim whatever to said tract was in the year 1865, when I received the receipts for the taxes of 1864, when I found that the taxes of 1864 had been paid by some one unknown to the agent of Mr. Corcoran, who paid the taxes; I mean any claim adverse to that of the United States and said Corcoran.

Int. 6. Please state fully what, if anything, you know as to payment having been made by said Corcoran for the land aforesaid; the time, manner, and amount of said payment; to whom the same was made; and whether or not payment was made by you, or to your knowledge, as the agent of said Corcoran, or how otherwise?

On the 26th November, 1847, Mr. Corcoran handed to the Solicitor of the Treasury a certificate of the U. S. Treasurer, showing a deposit to his credit of $22,177 03, for lands purchased of the Solicitor under his advertizement of August 17, 1847. The said sum was deposited
126 by Mr. Corcoran to pay for the lands so purchased, among which was the tract in Kendall Co., hereinbefore referred to.

Int. 7. State whether you ever made, or caused to be made any, and if so what, examination at any time, as to the condition of the title to said land? When was said examination made, and with what results? If any *any* report as to such state of title was ever made to you in writing, please attach the same, or a copy thereof, to your deposition, properly identified; or if the same is not now in your possession, state what *what* has become of it; what search, if any, you have made for the same; and state the contents or substance thereof.

In 1856 Mr. Corcoran sent an agent to examine into the condition and title of this land, and his report on the same is now in my possession. An extract from this report with remarks, marked A, is attached to Mr. Corcoran's answers, and is hereby adopted by me as a part of my answer. The said report is voluminous, and embraces a large quantity of other lands, and hence the extracts given, instead of sending the reports, or copying them in full.

Int. 8. Do you know any other fact, matter, or thing, of benefit or im-

portance to the plaintiff herein? If yea, state the same fully and at large.

127 I do not know of any other matter material to the interests of the plaintiff, save that the land in question was purchased in good faith by Mr. Corcoran, under an advertizement published largely throughout the country, inviting proposals from purchasers, and his bid being, in the aggregate, larger than any other, the Gov't awarded to him nearly all that was sold, for which he paid in November, 1847, and received deeds for the same dated 28th December, 1847; and he paid the taxes from 1844 inclusive, till 1863 inclusive, without any intimation of an adverse claim from any source whatever.

The consideration expressed in the deed from the Solicitor of the Treasury to W. W. Corcoran, containing this tract in controversy, was paid for the land conveyed by said deed into the United States Treasury for the United States, by said Corcoran bona fide.

And further this deponent saith not.

ANTHONY HYDE.

128 The taxes were paid from 1844 to 1863, inclusive, by Corcoran.

The plaintiff then offered in evidence certified copy of the schedules of Breese's property, as exhibited in his bankruptcy proceedings, signed and sworn to by him August 5, 1842.

It being agreed by counsel that the premises in controversy in this suit are not included in said schedules, and to show that fact being the purpose for which they are offered, it is agreed by the counsel in this case that said schedules may be omitted in this bill of exceptions.

129 The defendant insisted that it appeared from the evidence he went into possession of the premises in controversy under the several conveyances heretofore given in evidence by him in the winter of 1864–'5, the same being then, and having always before been vacant and unoccupied; that he thus acquired a paramount right to said premises to that of the plaintiff, as shewn in evidence in the trial of this cause.

But the court decided and held that the plaintiff was entitled to recover notwithstanding the possession taken as aforesaid; to which ruling and decision of the court the defendant, by his counsel, then and there exeepted.

It was then agreed by the counsel for the respective parties that the value of the premises in dispute was, at the time of commencement of this suit and of the trial thereof, three thousand dollars.

The foregoing was all the evidence in the cause.

The court, after consideration of the same, found the issues, and rendered judgment for the plaintiff; to which finding, decision, and judgment of the court the defendant, by his counsel, then and there

130 excepted, and prayed that this, his bill of exceptions, may be allowed, signed, and sealed, which is done accordingly.

THOMAS DRUMMOND. [SEAL.]

(Endorsed:) Filed April 7th, 1870. W. H. Bradley, cl'k.

On the same day, to wit, the 7th day of April, A. D. 1870, said defendant, John Dirst, filed in said clerk's office his bond for appeal in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

In the Supreme Court of the United States, in error to the circuit court of the United States for the northern district of Illinois.

JOHN DIRST, PLAINTIFF IN ERROR,
vs.
WILLIAM B. MORRIS, DEFENDANT IN ERROR.

Know all men by these presents that we, John Dirst, of the county of Kendall, and State of Illinois, as principal, and Jeremiah Col-
131 lins, of Morris, of the county of Grundy, in the State of Illinois, as surety, are held and firmly bound unto the above-named William B. Morris in the sum of one thousand dollars, to be paid to the said William B. Morris, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this seventh day of April, A. D. 1870.

Whereas the above-named John Dirst hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the northern district of Illinios:

Now, therefore, the condition of this obligation is such, that if the above-named John Dirst shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN DIRST. [SEAL.]
JEREMIAH COLLINS. [SEAL.]

Sealed and delivered in presence of—
SAM. W. FULLER.

Approved:

H. W. BLODGETT.

132 (Endorsed:) Filed April 7, 1870. W'm H. Bradley, cl'k.

133 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein said William B. Morris is plaintiff, and said John Dirst is defendant, as the same remains of record in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court at my office, in the city of Chicago, in said district, this twenty-ninth day of November, A. D. eighteen hundred and seventy, and of our independence the ninety-fifth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

[5-cent int. rev. stamp, affixed and canceled.]

134 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The President of the United States to the judge of the circuit court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between William B. Morris and John Dirst, in an action of ejectment, a manifest error hath happened, to the great damage of the said John Dirst, as by his complaint appears, and it is being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December, A. D. 1870, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done
135 therein to correct that error, what of right and according to the law and custom of the United States, should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighth day of April, in the year of our Lord eighteen hundred and seventy, and of the independence of the United States the ninety-fourth year.

[SEAL.] WM. H. BRADLEY, *Clk.*

(Indorsed:) Supreme Court of the United States. Dirst v. Morris. Writ of error.

136 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To WILLIAM B. MORRIS, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December, A. D. 1870, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein John Dirst is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, this eighth day of April, in the year of our Lord eighteen hundred and seventy.

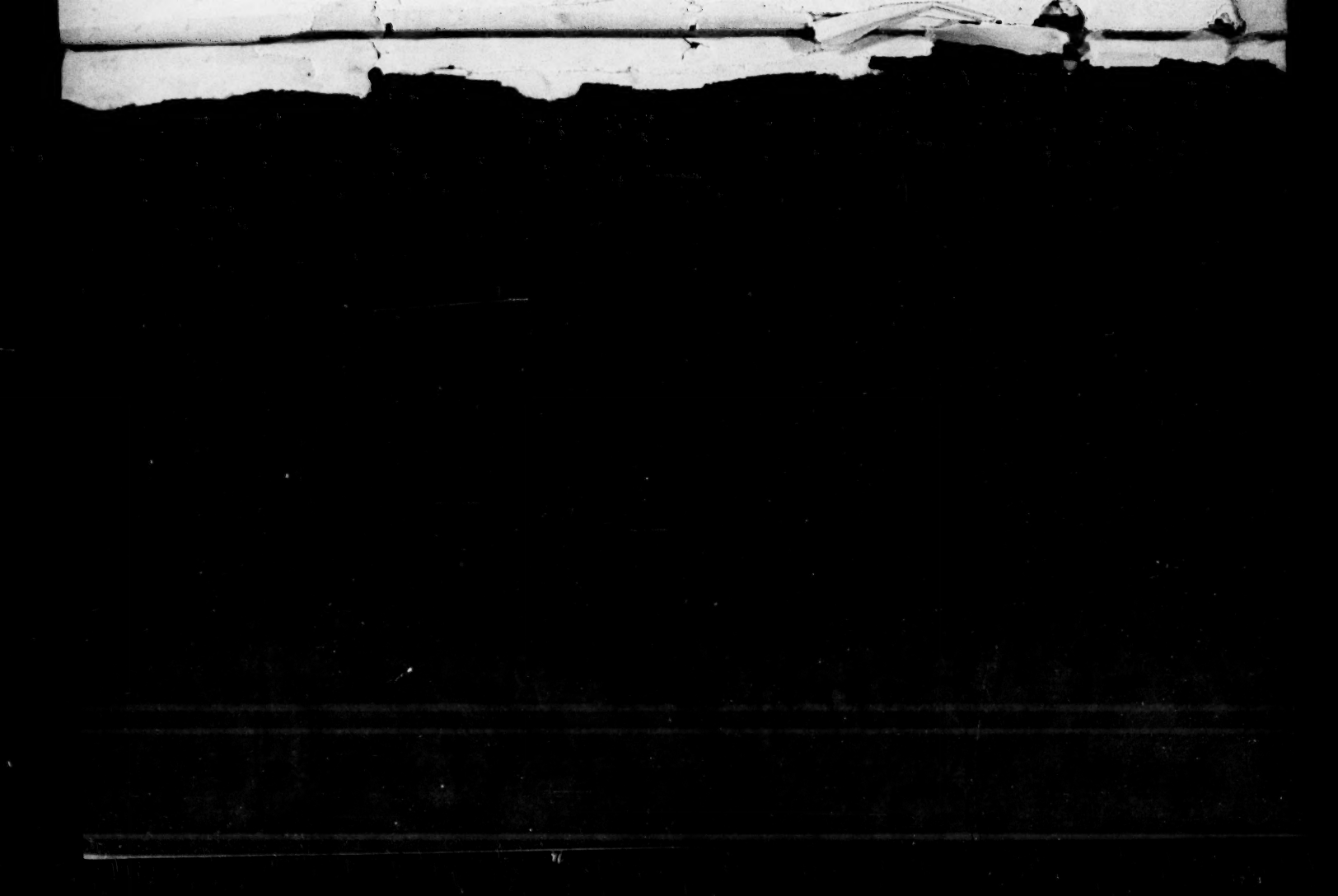
THOMAS DRUMMOND.

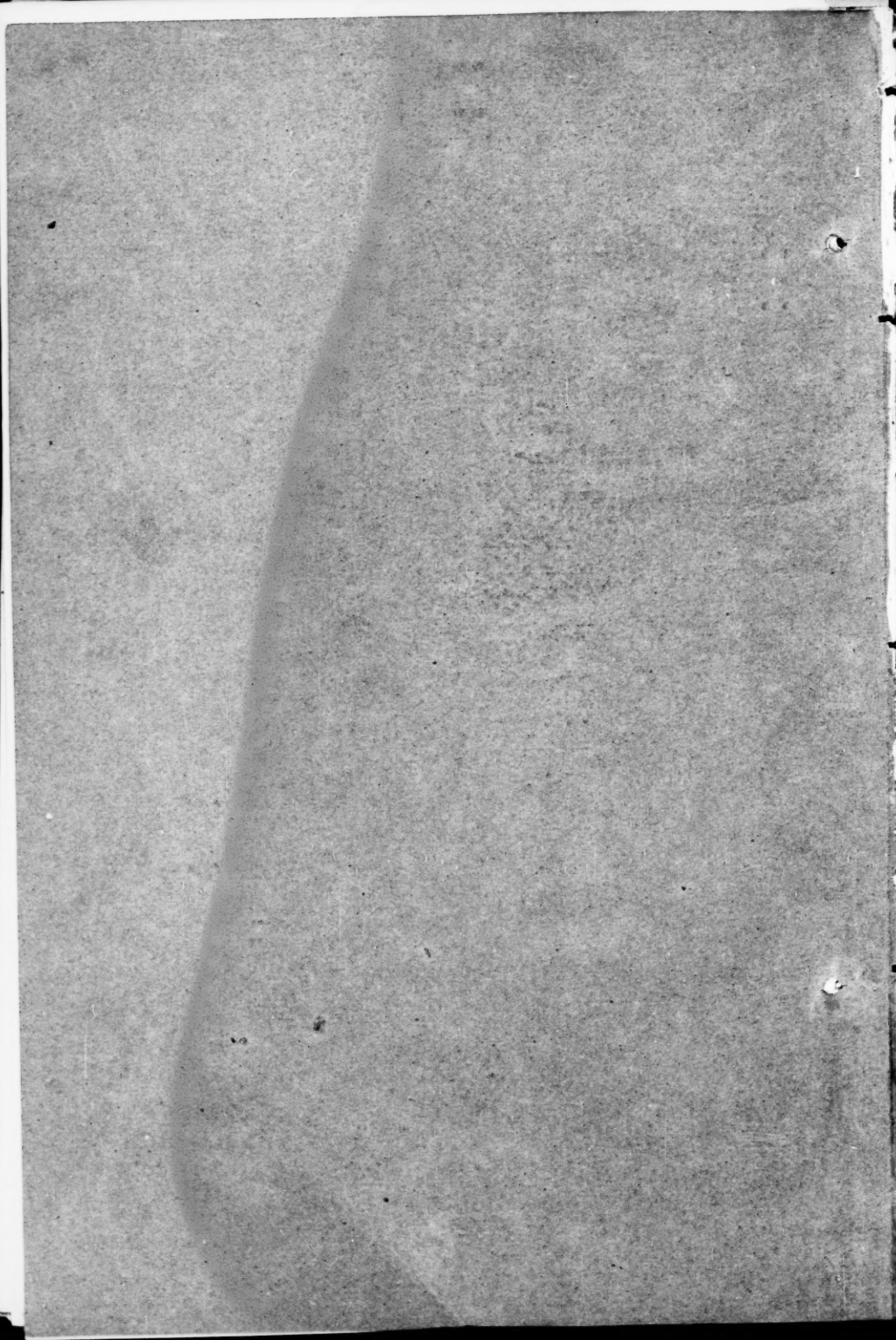
137 (Indorsed:) Dirst v. Morris. Citation.

Received a copy of the within citation this ninth day of April, A. D. 1870.

DENT & BLACK,
Att'ys for William B. Morris, Def't in Error.

(Indorsement on cover:) No. 388. John Dirst, plaintiff in error, vs. William B. Morris. N. Illinois C. C. U. S. Filed 12th December, 1870.





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SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, A. D. 1871.

JOHN DIRST, Plaintiff in Error,
vs.
WILLIAM B. MORRIS, Def't in Error.

No. 179.

Argument of Sam'l W. Fuller,

FOR PLAINTIFF IN ERROR.

Press of BEACH & BARNARD, 16 Congress Street.

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, A. D. 1871.

JOHN DIRST, Plaintiff in Error,
vs.
WILLIAM B. MORRIS, Def't in Error.

No. 179.

ERRORS ASSIGNED AND ARGUED BY THE PLAINTIFF IN ERROR.

1. The Circuit Court erred in admitting in evidence for the plaintiff below, the transcript of the proceedings in the foreclosure suit of the *United States v. Russell et al*, against the objection of the plaintiff in error. Such objection and the reasons therefor, appear on page 23 printed record, folio 61 and following. The decision of the Court, and exceptions thereto, appear at folio 66.

2. That the Circuit Court erred in admitting in evidence for the plaintiff below, the deed from the United States to Wm. W. Corcoran, against the objection of the plaintiff in error. (Record 28; folio 74–5.)

3. That the Circuit Court erred in holding that the plaintiff in error did not, by the several deeds which he offered in evidence, and the possession which he took of

the demanded premises, acquire and show a paramount right to them as against the plaintiff below. (Record 48; folio 129.)

4. That the Circuit Court erred in finding the issues and rendering judgment for the plaintiff below. (Record 48; folio 130.)

Sam'l W. Fuller,

Counsel for Plaintiff in Error.

STATEMENT OF THE CASE.

This was an action of ejectment brought by Morris against the plaintiff in error, and tried by the Court without a jury. On the trial, the plaintiff offered as a part of his evidence of title, the transcript of the record of proceedings to foreclose a mortgage, and the defendant objected to its admission, on the ground that it did not appear from the transcript, that the owner and holder of the equity of redemption was brought into Court as a party defendant to the foreclosure suit, and therefore, that the equity of redemption was not foreclosed.

The plaintiff claimed title under the foreclosure proceedings, and the defendant under the owner of the equity of redemption; the Circuit Court held, it appeared from the transcript offered in evidence, that Breese, the holder of the equity of redemption, *was* brought into Court as a party defendant, and became subject to its jurisdiction, so as to make an effectual foreclosure of the equity of redemption. (Printed record 23, folio 61.)

The question arises out of the following state of facts: Both parties claimed title to the premises in controversy under J. B. F. Russell, as their common source of title. (Record 5, folio 11.)

Russell mortgaged these premises, together with many other parcels of land, to the United States, Dec. 21, 1837. The mortgage was acknowledged March 1, 1838, recorded in Cook county, April 25, 1838, in LaSalle county, where this land was situated, May 11, 1838, and in Will county,

January 29, 1867 (folio 25). The mortgage included lands in all these counties.

The land in dispute is described as the N. E. ¼ Sec. 23, T. 35, N. R. 8 E. 3d P. M. (folio 4), and is now in Kendall county, which was organized in 1841, February 19, (Laws of 1841, p. 75), by taking a part of LaSalle county (including these premises) and of Kane county. (Folio 83.)

The mortgage was made to secure the sum of $55,253.87, due from Russell to the United States, as appeared by his bond of the same date as the mortgage, but payable in instalments, due in one, two and three years after the date of the bond and mortgage (Folio 13.)

This mortgage is the origin and foundation of the title of the United States to the premises, and was foreclosed by suit in the Circuit Court of the United States, begun Sept. 1, 1840, to which Russell and Josiah S. Breese, under whom the defendant below claimed title, were, with others, made parties defendant.

Breese's title will be shown hereafter; the question whether or not he was brought into court as a party defendant to the foreclosure suit will now be considered.

The suit was begun September 1, 1840, (folio 27), and on the trial the plaintiff below offered only a part of the foreclosure proceedings; the bill will be found in the record, folios 28 to 43, and is in the ordinary form. A summons issued, returnable on the first Monday of December, 1840, (folio 44), and it is stated on the top of page 17 of the record, it "was returned into the clerk's office "executed upon all the defendants by delivering to "them true copies thereof." This is an error in making

up the record, if it so appears in the record, because the summons itself, with the return thereon, was afterwards offered in evidence by the defendant, and will be found in record, page 24, folio 65, and shows that the writ was neither served on Breese, nor several other defendants.

The defendant below also offered in evidence the fee bill in the case of the *United States* v. *Russell et al.*, which showed that costs were taxed for only one summons, (folio 63).

The point in this case, is whether the recitals in the record, of service upon Breese, can be supported, when the summons itself shows he was not served, and the extraneous or oral proof, offered by the defendant, shows that he could not have been served.

The process was returnable to the December term, A.D. 1840, and on the 17th day of that month, the cause was continued, on motion of complainant, to the next term, which would by law have occurred on the first Monday of June, 1841. (5th Statutes at Large, 215).

On the 22d day of June, 1841, an order was entered, reciting that the default of the defendants had been entered at a former day of the term, and the bill taken as confessed against them, (folio 45).

The cause was then referred to a master, to compute the amount due the complainant, and the suit conducted in the usual way to a final decree, and sale of the mortgaged premises by the master on the 20th day of April, A. D. 1843, when Butterfield, the attorney and solicitor of the United States, for the United States bid off the premises in controversy for $160, (folio 58), and made a deed to the United

States of this and most of the other mortgaged lands, dated April, 21, 1843, which was recorded in Kendall County, July 12, 1844, (record 25, folio 67).

The question as before stated, is whether the record shows, with sufficient legal certainty, that Breese was brought into court as a party defendant to this foreclosure suit?

So far as the record shows, by way of recital or otherwise, but one summons was issued in the foreclosure suit, which is found on page 16 record, folio 44, and on page 24 record, folio 65, with the marshal's return on the 2d day of November, A. D. 1840, endorsed that Breese, with five others of the defendants, was not found in his district, (folio 65).

The fee bill shows that but one summons was taxed in the case, (folio 63).

The defendant below offered in evidence all the files, including the fee bill and summons, and the orders in the cause, which were not offered and read in evidence by the plaintiff, (folio 62).

To rebut any presumption that another summons was issued and served on Breese, the defendant below called S. Paine as a witness, who testified that he was a partner of Breese in 1837–8; that the latter left the State of Illinois in 1839, and went to reside in the city of New York, and was not in Illinois after 1839, and that he had since died, (folio 62).

The plaintiff below objected to the admission of Paine's testimony, but it was received by the Court, which, after

considering that and all the other evidence on this point, admitted the transcript in evidence to support the plaintiff's title, to which decision of the Court the defendant below duly excepted, (folio 66).

This case is to be considered in connection with that of *Collins et al.* v. *Riggs*, which stands next after it upon the docket of this Court, and was an action of ejectment tried in the same Court, in which the plaintiff below, Riggs, presented the same title as Morris offered in this suit, including the same transcript of the foreclosure suit of *The United States* vs. *Russell et al.*, and in which it appears that Collins made the same objection to the admission of the transcript as was made in this case, and that he also called S. Paine as a witness, who gave the same testimony as in this, (see that record, page 25, folios 78–9), and then offered, as was done on the trial of this case, *all the files, entries and records* in the foreclosure suit, which are precisely the same as in the record of this case, but in different order, it appearing in Riggs' case, that the order reciting the service of process, and for taking the bill as confessed against the defendants followed next after the record of the summons and the return thereon. (See record, Riggs' case, pages 33–4, folios 107–8).

But this is precisely the order appearing in this case, at folio 45, only omitting the venue and title of the cause, and the reference to that entry in the Riggs case is only made here to show *how it looks in connection with the rest of the record*, and to suggest the argument that this order should only be *construed* as a recital of service of process upon the parties who by the marshal's return *appear* to have been served. The facts appear to be these: the suit was

begun and summons for the December term, 1840, issued September 1, 1840; the process was served November 2, 1840, on seven of the thirteen defendants, and returned "not found" as to the others, including Breese, November 24th, 1840, (folio 65).

December 17th, 1840, the cause was continued, (folio 44), and June 14th, A. D. 1841, an order entered, reciting that "more than three months have elapsed since the return of "the writ upon them (the defendants) executed." It is therefore considered, &c., (folio 45).

It thus appears, from the record, that only one summons was issued, that only one was taxed in the costs, that it was returned *not* served upon Breese, that the only process referred to in the order of the Court, was one which had been served more than three calendar months before the date of the order, from Paine's testimony that Breese was not, during all that time, "here," that is in the State of Illinois, and the record does not show that the appearance of Breese was entered in the suit.

The only presumption of service is that founded upon the recital in the order entered June 17th, 1841, that the defendants had "been duly served with process."

What defendants does this order include?

Only those, it is insisted, who, by the marshal's return, *appear* to have been served; and this is the fair, just and obvious construction of the order, and it ought not, against all the other evidence in and outside the record, to be construed to include those who were not, and could not be served with process, and did not enter their appearance.

The Circuit Court held otherwise, and this is the first error assigned upon the record, and is based upon timely objection and exception taken in the Court below, (folios 61–2, 66).

This transcript having been admitted in evidence, the plaintiff below next offered in evidence a deed from the master in Chancery of a part of the mortgaged premises, founded upon the decree and the master's sale under it. (Record 25, folio 67).

It appears from this deed, that a part of the mortgaged premises, including the lands in question, was bid off by the United States for the sum of $2,927.75, that being the round sum bid for all the lands described in folios 69, 70, and 71 of the record, 26–7.

This sale was confirmed by the Court, record 28, folio 74.

The plaintiff below next offered in evidence a deed from the United States, by R. H. Gillett, solicitor of the treasury, to W. W. Corcoran, dated December 28, 1847, recorded in Kendall county July 27, 1848, (folio 74).

This deed conveys three or four tracts of land, including the premises in controversy, (folio 76).

The defendant, on the trial below, objected to the admission of this deed in evidence, on the ground that it did not appear thus far in the evidence in this cause that the United States had any title to the premises in controversy, except as mortgagee, and that deed did not purport to assign or convey to the grantee any part or portion of the mortgaged debt, and, as the defendant claimed, it did

not appear that the mortgage had been foreclosed, as against Josiah S. Breese, the owner of the equity of redemption in the premises mortgaged by Russell to the United States, therefore the deed from the United States to Corcoran did not pass to him any legal title or estate to the premises in controversy. But the Court overruled these objections of the defendant, and admitted the deed to be read in evidence, in support of the plaintiff's title; to which ruling and decision of the Court the defendant, by his counsel, then and there excepted, (record 28, folio 75).

The plaintiff below next offered in evidence a deed from Corcoran to himself, (Wm. B. Morris), dated December 20, 1867, recorded March 13, 1868, of the premises in controversy, (record 30, folio 79).

It was then agreed by the parties to the suit that in 1837, and until 1841, the premises in controversy were included in La Salle county, from which a part of Kendall county was taken, under an act of the General Assembly of the State of Illinois, approved February 19, 1841, (folio 83).

This was the plaintiff's case.

The defendants then offered in evidence a copy of a deed from J. B. F. Russell to Josiah S. Breese, dated May 30, 1837, recorded in Cook county, June 10, 1837, in Will county, June 8, 1837, and in Kendall county, May 10. 1864.

The point upon this deed with reference to the mortgage from Russell to the United States is this: the deed from Russell to Breese is dated May 30, 1837, does not appear to have ever been recorded in La Salle county, while

the mortgage from Russell to the United States was dated December 21, 1837, and recorded in La Salle county, May 11, 1838. The deed from Russell to Breese being prior in date and delivery, but not recorded until after the mortgage, was, by the registry laws of Illinois, postponed to the rights of the mortgagee, whereby Breese became, as against Russell and the United States, the owner and holder of the equity of redemption, and as the United States made him a party defendant to the foreclosure suit, with an allegation in the bill that he with the others named as defendants, "had "some interest or claim upon the mortgaged premises," (record 15, folios 40–41), it is clear the United States, knowing that he had some interest in the mortgaged property, could not foreclose his interest without making him a party to the foreclosure suit, and as it appears he was the owner and holder of the equity of redemption, no effectual foreclosure of the mortgage could be made without making him a party defendant, and subjecting him to the jurisdiction of the Court.

This deed from Russell to Breese appears to have been a conveyance of several tracts of land, not naming the counties, but well enough described by their Congressional descriptions, as in the State of Illinois, for the consideration of $2,000; and as the parties to it were all dead at the time of trial, no reason can now be given why, after being promptly recorded in three counties, it was not recorded in La Salle county. The defendant on the trial below connected himself with this title by the following chain of conveyances, not necessary to be more than noted: Decree in bankruptcy against Josiah S. Breese, entered in the District Court of the United States for the Southern District

of New York, September 15, 1842, and appointment of W. C. H. Waddell his assignee, (folios 90 to 93).

Deed from Waddell, as assignee of Breese, to Caleb H. Wallace, March 23, 1861; recorded in Kendall county May 10, 1864, (folios 94 and 298).

A deed from Josiah S. Breese to John D. Brown, dated June 22, 1861; recorded in Kendall county, May 10, 1864, (record 38, folio 100.)

A deed from Caleb H. Wallace to S. W. Hardin, dated September 4, 1861; recorded in Kendall county, April 4, 1864; (record 39, folio 103).

A deed from S. W. Hardin to John D. Brown, November 19, 1863; recorded in Kendall county, April 4, 1864, (record 40, folio 106).

A deed from John D. Brown to John Dirst (plaintiff in error), dated December 12, 1864; recorded in Kendall county, February 21, 1865, (folio 111.)

It was then agreed that Dirst went into possession of the premises in controversy in the winter of 1864–5, claiming under the last-mentioned deed, and paid the consideration named in it of $2,000, (record 44, folio 116.)

This was the defendant's case. The plaintiff then read in evidence the depositions of W. W. Corcoran, and of Anthony Hyde, to prove that Corcoran purchased the lands of the United States in good faith, and paid the purchase money, and all taxes thereon from 1844 to 1864, without notice of any adverse claim until that time.

Hyde also testified that he, as the agent of Corcoran, had examined and had charge of the lands in controversy, and paid the taxes for the owner, without knowledge of any

adverse claim until the year 1865, (record 44 to 48, folios 117 to 127).

The plaintiff below then offered in evidence schedules of Breese's property, as exhibited in his bankruptcy proceedings, signed and sworn to by him, August 5, 1842. It was agreed by the counsel, that the premises in controversy were not included in those schedules, (record 48, folio 129.)

The defendant below, then insisted that, as it appeared from the evidence, he went into possession of the premises in controversy, under the several conveyances given in evidence, in the winter of 1864–'5; the same being then, and always before having been, vacant and unoccupied; he thus acquired a paramount right to them, as against the plaintiff, as shown in evidence in the trial of this cause. But the Court decided and held that the plaintiff was entitled to recover, notwithstanding the possession thus taken; to which ruling and decision of the Court the defendant, by his counsel, then and there excepted, (record 48, folio 129).

This was all the evidence in the cause. It was then agreed that the premises were worth $3,000, and the Court, after consideration, found the issues and rendered judgment for the plaintiff below, to which the defendant duly excepted and has properly prosecuted a writ of error to this Court, and presents, for argument and decision, the three following propositions:

ARGUMENT AND AUTHORITIES.

I.

Breese being the owner and holder of the equity of redemption in the mortgaged premises, no effectual foreclosure of the mortgage could be made without his being made a party defendant to the foreclosure suit, brought into Court, and subjected to its jurisdiction.

This proposition is too plain and familiar to require anything more than a reference to a few of the cases in which it has been decided.

"Where the mortgagor has conveyed his interest in the "equity of redemption, no suit, in this Court, to foreclose "the mortgage, can be commenced against him without "making the owner of the equity of redemption a party, "although the mortgagor is still liable upon his bond for "the deficiency. For where the owner of the equity of "redemption is not a party to the suit, the Master's deed "will give no title to the purchaser as against him."

Reed v. *Marble*, 10 Paige, 409.

"A decree of foreclosure of the equity of redemption, "and a sale in pursuance thereof on a bill filed against the "mortgagor alone, do not affect the rights of purchasers "deriving title to the premises from and under the mortgagor, and who were not made parties to the bill in "equity."

Watson & Polhemus v. *Spence*, 20 Wendell, 260.

Fuller v. *Van Geesen*, 4 Hill, 174.

Ohling et al v. *Luitjens*, 32 Illinois, 30.

II.

It does not appear from the transcript of the proceedings in the foreclosure suit, certainly not expressly nor (as it is insisted) by fair legal intendment or construction, that Breese was served with process or otherwise brought into Court in that suit, but taking the record itself, and the testimony of Paine, it affirmatively appears that he was not, and could not have been served with process, nor did he enter his appearance.

The fair construction of the order of the Court reciting that "the defendants had been served with process," [folio 45] only makes it include the defendants who appear by the marshal's return to have been served.

It is not denied, that recitals of service of process, or of any other matter of fact contained in decrees, are *prima facie* evidence of such service in general, but when the summons itself shows that a party was not served, and there is no entry of his appearance, the fee-bill shows that costs were taxed for but one summons, and it is shown by extraneous evidence that the party was not within the jurisdiction of the Court after the commencement of the suit, the recital in the decree, and any presumption founded upon it, is rebutted, and should go for nothing.

I do not propose any discussion of the innumerable cases in which this, and other Courts, have held, that every presumption should be indulged to uphold the validity of judicial proceedings. Most, if not all, the cases in this Court, have arisen upon records which were consistent with themselves, and in which the recitals or presumptions contained in one part of the record, were not rebutted by equally positive recitals and proof in other parts.

But this is not a case of balancing one recital or presumption against another, for the summons shows explicitly that it was not served upon Breese; the whole record, taken together, shows that but one summons was issued; there is no evidence of his appearance having been entered. The outside proof shows that he could not have been served, and, therefore, the recital in the order of the Court should be *construed* as including only the defendants who appear by the officer's return to have been served.

This *construction* is consistent with the established rules of law, with the record itself, and the demands of justice.

If the summons was not preserved in the record with the return of the officer, showing who were and were not served, then the recital of service in the decree would be *prima facie* evidence that all the defendants were served, as was held by this Court in the case of *Comstock* v. *Crawford*, 3 Wallace, 403.

This Court again recognized and followed the same rule in *Secrist* v. *Green*, 3 Wallace, 751, where, in a case that came from Illinois, it was held, that such recitals of service are *prima facie* evidence of the fact, *but not conclusive.*

The very point arising in this case was made and decided in *Sibley* v. *Waffle*, 16 New York, 189, where, notwithstanding the recital that "*due service*" had been made upon all the defendants, it appeared, by reference to the notice of publication, that it had *not* been published for the length of time required by law, and so the Court of Appeals decided that no jurisdiction was acquired and that the recital did not aid the matter.

So in Iowa, where the recital of service of notice was contradicted by the other parts of the record, the Court

said: "Whilst it is true that every presumption is to be "made in favor of the jurisdiction of the District Court, "yet, if the record discloses the fact, that the evidence "which is the basis of such jurisdiction, and which must "appear of record, was never made before the Court, such "presumption is thereby rebutted."

Tunis v. *Withrow*, 10 Iowa, 308.

The rule to guide the examination of the authorities upon this point, is well stated by this Court, as follows: "In all "judgments by default, whatever may affect their compe- "tency or regularity, every proceeding, indeed, from the "writ and endorsements thereon, down to the judgment "itself, inclusive, is part of the record, and is open to exam- "ination."

Harris vs. Hardeman et al., 14 Howard, 338.

In the case of the *Lessee of Walden* v. *Craig's Heirs et al.*, 14 Peters, 152, this Court held "that the marshal's return of "service, or non-service, which he endorses on the process, "and of which he has official knowledge, becomes matter "of record, and is binding on the parties. * * * * * * * "It is admitted that the service of process, or notice, is "necessary to enable a Court to exercise jurisdiction in "a case; and if jurisdiction be taken where there has "been no service of process, or notice, the proceeding is a "nullity. It is not only voidable, but is absolutely void."

The case of *Bodurtha and another* v. *Goodrich*, 3 Gray, 508, is exactly like this: there, the Sheriff returned the writ *non est* as to one of the defendants, and the record recited that "the defendants came by their attorney," &c., and the Court, per SHAW, C. J., held, that the defendant who was not served, might contradict the recital, and show that he

did not authorize any appearance to be made for him, saying: "We think, therefore, that where it appears, as in "the present case, that the defendant was an inhabitant of "another State, that no property of his was attached, by "trustee process or otherwise, and that he was not served "with process; and the only ground to sustain the jurisdic- "tion is, that he appeared by attorney; it is competent for "the plaintiff in error to aver and prove, that such attor- "ney was never authorized to appear for him, and thereby "give the Court jurisdiction. And even had the record "gone further, and stated that such attorney was duly au- "thorized, and did appear, still it would be open to the "plaintiff in error to aver and prove facts tending to show "that the Court had no jurisdiction of the cause, and "therefore that they could make no record, binding upon "him, being a stranger, and such record would not be "conclusive. It would be reasoning in a circle, and incon- "clusive, to say, that the Court had jurisdiction because it "was shown by their record that the defendant appeared "by attorney, and that they had authority to make such "record binding upon him, because they had jurisdiction."

In *Bloom et al.* vs. *Burdick*, 1 Hill, 130, the record from the Surrogate's Court recited that the necessary preliminary proceedings had been taken to give the Court jurisdiction; but on examination of them, this recital was found to be false, and the Court held the subsequent decree to be a nullity, pp. 133 and 139.

In *Clark* vs. *Thompson*, 47 Illinois, 27, the Court say: "If the record shows service which is insufficient, and the "record fails to show that the Court found that it had juris- "diction, then the presumption is rebutted, and it must be "held that the Court acted upon the insufficient service.

" When a summons and return appear in the record, and " there is no finding of the Court from which it may be " inferred that there was other service, or appearance, it " will be presumed that the Court acted upon the service " which appears in the record. In this case, the summons " and acknowledgment of service were not sufficient to con- " fer jurisdiction over the minor defendants, and unless juris- " diction was otherwise obtained, the decree, as to them, " was a nullity, and may be attacked in a collateral pro- " ceeding."

In *Pardon* vs. *Dwire et al.*, 23 Illinois, 572, the judgment recited that the summons was " returned duly served " by reading to the defendant;" but upon referring to the return upon the summons itself, it did not appear to have been served upon the defendant, and the Court held, as this Court held in the case of *Comstock* vs. *Crawford*, 3 Wallace, 396—that while the recital of service was *prima facie* evidence of the fact of service, yet it was not conclusive, and might be contradicted by producing the original summons and the returns upon it.

An almost endless number of cases may be cited upon this subject, both from the English and American Reports. Most of them are collected and classified, with excellent discrimination, in the last edition of Smith's Leading Cases, Vol. I, Part 2, pages 1009 to 1025, but I have selected and cited only those which involved the precise point raised upon this record, and while it is admitted that, in the absence of the summons and return from a record, a recital in the judgment or decree, of service of process upon the parties, or that they entered their appearance, is sufficient *prima facie* evidence of that fact, yet when the original

summons and return are contained in the record, the latter shall prevail, and the recitals go for nothing.

This is the precise question presented and argued in this case, and I do not intend to trouble the Court to examine any cases which are not directly in point.

The general rule is, that in suits upon judgments rendered in other States, the officer's return of service, or the recital of an appearance by the defendant, may be contradicted by the defendant.

Carleton v. *Bickford*, 13 Gray, 591.
D'Arcy v. *Ketchum et al.*, 11 Howard, 175.
Bimeler v, *Dawson et al.*, 4 Scam. 541.
Welch et al. v. *Sykes*, 3 Gilman, 197.

This rule is nowhere stated with greater clearness and force than in the case of *Elliott et al.* v. *Peirsol et al.*, 1 Peters, 340: "We agree that if the County Court had jurisdiction, its decision would be conclusive. But we cannot yield an assent to the proposition that the jurisdiction of the County Court could not be questioned, when its proceedings were brought, collaterally, before the Circuit Court. *We know nothing in the organization of the Circuit Courts of the Union, which can contradistinguish them from other Courts, in this respect.*. Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no

" justification; and all persons concerned in executing such " judgments or sentences are considered, in law, as trespass- " ers. This distinction runs through all the cases on the " subject, and it proves that the jurisdiction of any Court " exercising authority over a subject, may be inquired into " in every Court, when the proceedings of the former are " relied on and brought before the latter by the party " claiming the benefit of such proceedings."

The rule laid down in this case is not restricted, or even qualified, by anything decided or said in the case of *Thompson* v. *Tolmie*, 2 Peters, 168.

The subject is fully considered, and the rule contended for clearly stated in *Goudy et al.* v. *Hall*, 30 Illinois, 116.

Such is the rule in England:

Ferguson v. *Mahon*, 11 Adolphus & Ellis, 179.

Bonaker v. *Evans*, 16 Queen's Bench, 171.

Capel v. *Child*, 2 Crompton & Jervis, 579 opinion of Bayley, B.

But the general rules relating to jurisdiction are so well settled, that the citation of authorities becomes wearisome to the counsel and the Court.

This case only calls for an application of them to a new state of facts, or a new instance.

III.

The United States was a mortgagee, and if the equity of redemption was not foreclosed by bringing Breese, the owner and holder of it, into Court, they had no other title, and the deed made by the Solicitor of the Treasury to Corcoran, not being accompanied by an assignment of the whole or

any part of the mortgage debt, passed to him no title or estate in the mortgaged premises.

It is important to consider that the mortgage debt was a single sum, evidenced by a single bond, although payable in three annual instalments, (record 5, folio 13). So that this is not the case of an ejectment brought by the assignee of a part or the whole of the mortgage debt; but that of a deed, made by the mortgagee to a stranger, of a part of the mortgaged premises, without an assignment of the debt, or any part of it.

The rule on this subject is believed to be settled in this Court, by the decision in the case of *Hutchins* v. *King*, 1 Wallace, 58.

"He (the mortgagee) cannot by conveyance transfer any "interest in the premises without a transfer of the debt "secured; his interest is not subject to attachment or seiz- "ure on execution; he cannot remove the buildings on the "premises, nor the fixtures attached; nor can he subject "the premises to any uses but such as may furnish the "means for the payment of the debt secured, without im- "pairing the value of the estate."

While the contrary rule is established in Maine and Massachusetts, this Court has followed the decisions in New York, New Hampshire, and most of the other States, as will be seen by reference to 2d Washburn on Real Property, 114–5, edition of 1868.

See *Peters* v. *Jamestown Bridge*, 5 Cal., 334.
Nagle v. *Macy*, 9 Cal., 426.
Willis et al. v. *Vallette*, 4 Met. Ky., 195–6.
Ladue v. *The Detroit and Milwaukee Railroad*, 13 Mich., 395–6.

This is one of the best considered cases on this point to be found in the books.

This is the law in Illinois:

"The mortgagor is now regarded as the real owner of "the land, for all beneficial purposes, subject to the charge "of the re-payment of the money."

Fitch et al. v. *Pinckard et al.*, 4 Scammon, 83.

The Supreme Court of Illinois has shown a determined purpose to uphold all the rights of mortgagees, and the assignees of mortgage debts, so far as necessary to protect the security, and while the precise question now under discussion has not been decided in that State, yet the opinions of the Court in the well considered cases of *Moore* v. *Titman*, 44 Illinois, 367, and *Griffin et al.* v. *The M. Co. of Chicago et al.*, 52 Illinois, 142, stop far short of holding that the deed of a mortgagee, without an assignment of the mortgage debt, will pass the legal title to the mortgaged premises.

This question is not important if the Court holds that Breese was brought into Court and the equity of redemption extinguished in the foreclosure suit, but if the Court should hold that he was not, then this question must be considered and decided.

The opinion of the Circuit Judge was published at the time in the *Chicago Legal News*, but I have not been able to get a copy of it since the fire, and, therefore, submit the question, as it was made on the trial, upon the foregoing authorities and argument.

The case, in short, is this: Russell first conveyed the demanded premises to Breese (rec. 31, folio 83), by deed, recorded in Cook county, June 10, 1837, and in Will county, June 8, 1837, where part of the lands conveyed by the deed were situated, but never recorded in LaSalle county, where the land in controversy is situated. On the 21st of Dec. 1837, he mortgaged this land to the United States, which mortgage was recorded in LaSalle county, May 11, 1838; thus the relations of the two grantees of Russell were as follows: The United States was the mortgagee, and Breese the owner of the equity of redemption.

On the 1st Sept. 1840, the United States commenced a suit against Russell to foreclose this mortgage, and made Breese a party, showing knowledge that he had some interest in the premises (the mortgage included lands then situated in Cook and LaSalle counties); summons issued against Breese as well as the other defendants, but the Marshal returned it not served on Breese and six others of the defendants; the testimony of Paine shows that Breese was not then living, nor in the State of Illinois. The record does not show any appearance by Breese, he is dead and could not be examined to prove that he did or not enter any appearance. An order taking the bill *pro confesso* against the defendants was entered, reciting, that "the said defendants have been duly served with process, and having "failed to appear," &c., and the defendant below offered *all the files and entries in the case* in evidence which showed, that costs were taxed for only one summons, and the question is, whether or not the presumption of service arising upon the recital in the order or decree of the Court, shall prevail against the officer's return that Breese was not

served, against the positive proof that he was not within the jurisdiction of the Court to be served, and the nearly positive proof, that only one summons was issued?

If the issue thus stated was to be tried as a question of fact, would not the result inevitably be a finding by either Court or jury, that he was not served?

The authorities cited under the second head, concur with the reason of the matter, that the recital goes for nothing as against the marshal's return and the other evidence in the case; that the equity was not foreclosed, and as to Breese, the owner and holder of it, the decree of foreclosure was a nullity, and as the United States had no estate, except as mortgagee, and did not assign any part of the mortgage debt to Corcoran, its grantee, the latter took no legal estate by the deed to him, and the plaintiff's case should have failed at that point.

Then, as to the equities of the case, to be sure Corcoran paid his money to the United States for the deed which he received, and also paid the taxes on the land in controversy until 1864, but, on the other hand, Dirst paid *his* money and took possession of the premises under the chain of title derived from Breese, the first grantee of Russell, believing that Breese, and his grantees, had the better title.

The Master's deed to the United States was recorded in Kendall county, July 12, 1844; that from the United States to Corcoran, in the same county, July 27, 1848; and that from Corcoran to Morris, March 13, 1868.

In the winter of 1864–5, Dirst having paid for the land took possession of it under a chain of title derived from Russell and Breese, and all recorded on or before February

21, 1865, or more than three years before the deed from Corcoran to Morris, the plaintiff below.

Being prior, in point of origin and possession, Dirst's title ought to prevail, because the deed from Russell to Breese included some of the lands afterwards mortgaged by Russell to the United States, and when the latter began the foreclosure suit, Breese was made a party defendant, and upon the records of Cook and Will counties appeared the deed to Breese, so the United States, and all persons buying at the Master's sale, had notice of Breese's title to the land, and, on examination of the record, would learn that the mortgage was subject or subsequent to the conveyance to Breese and the title of Breese was thus apparent to all who bought at the Master's sale, or derived title from it, and being first in possession under the elder title, Dirst's rights ought to prevail against that of the defendant in error.

The point is, that Breese became the owner of the equity of redemption in the LaSalle county lands, as against the United States, and when the record of the foreclosure suit shows the United States knew he had some interest in the land; and the records of Cook and Will counties disclosed that he had a prior deed, not only of the lands in those counties, but of that in LaSalle county, including the tract now in controversy; the United States were bound to make him a party defendant, and having omitted to do so, the foreclosure was ineffectual as to him, for the reason stated in the first point of this argument.

The record of Russell's deed to Breese in Will and Cook counties, long before the mortgage was made, comes very

near being sufficient notice as to the other lands described in it and situated in LaSalle county, and gives the title of Dirst strong equitable claims to the protection of the law. That protection was erroneously denied by the Circuit Court, if the points made in this argument are well taken; for Breese had the elder title in point of fact, and it was first recorded in two of the three counties in which the lands were situated, and an examination of the record sufficed to show the United States that Breese had some interest in the land, and therefore they were bound to take notice what that interest was, and finding that if it was not in all respects superior to the mortgage, as to the lands in LaSalle county, he certainly had an equity of redemption, which was not foreclosed, and for the reasons stated in the second and third points, the foreclosure was void as to the interest of Breese; and the deed from the United States passed no title to the lands in controversy to the grantee, under whom the defendant in error claimeda right of recovery: Wherefore it is insisted that the judgment should be reversed.

Sam'l W. Fuller,

Counsel for Plaintiff in Error.

Chicago, February 12, 1872.

Strong

Supreme Court of the United States.

JOHN DIRST, Plaintiff in Error,
vs.
WILLIAM B. MORRIS, Defendant. } No. 180.

BRIEF FOR THE DEFENDANT IN ERROR.

This cause comes up by writ of error to the Circuit Court of the United States for the Northern District of Illinois.

In that court the defendant in error brought an action of ejectment against the plaintiff in error, and recovered judgment, which judgment the plaintiff in error now seeks to reverse.

THE CASE

was thus:

Both parties claimed under one J. B. F. Russell, who, in 1837, was owner of the land in question. In that year he was a debtor to the United States in the sum of $55,050.77 (Rec. p. 5), and on the 21st day of December in that year, to secure said debt, he executed and delivered his mortgage to the Solicitor of the Treasury of the United States and his successors, and delivered his penal bond therewith in double the amount of the debt. The mortgage included the lands in question and various other parcels of land lying in several counties in the State of Illinois, and was duly recorded in all the counties where the land lay. (Rec. pp. 9, 10.)

In September, 1840, the United States filed their bill in

the Circuit Court for the Northern District of Illinois for the foreclosure of this mortgage and the sale of the land therein described, and such proceedings were had therein, that on the 22d day of June, 1841, a decree of foreclosure and sale was passed. (Rec., p. 17.) The sale thus decreed was made on the 21st day of April, 1843, and the United States became the purchaser, (Rec., p. 25), and by deed of that date, the land was conveyed to the United States by the Commissioner who made the sale. (Rec., p. 25.) On the 28th day of September, 1847, the United States conveyed the said tract of land to William W. Corcoran, (Rec., p. 28,) who, on the 20th day of December, 1867, conveyed the same to William B. Morris, the defendant in error. (Rec., p. 30.)

On the 11th day of January, 1869, the defendant in error brought an action of ejectment against the plaintiff in error, who was found in possession, and recovered judgment, to reverse which, this writ of error is brought. (Rec., p. 1.)

On the trial, the title of the defendant was disclosed as follows:

It appeared that on the 30th day of May, 1837, (prior to the mortgage to the United States,) Russell had executed and delivered to one Breeze a deed in fee for the land in controversy. (Rec., p. 31.) This deed was not recorded in the county where the land lay until the year 1864, twenty-seven years after its date and delivery, twenty-three years after the decree of foreclosure and sale, and seventeen years after the United States had conveyed the land to Corcoran.

It does not appear that Breeze ever claimed title under the deed, though in 1861 he quit claimed the premises in controversy, and others, to one Brown. Rec., p. 38. In 1842, he became a voluntary bankrupt in the District Court for the Southern District of New York, (Rec., p. 34,) but did not include his land on thiss chedule. (Rec.,

p. 48.) On the 23d of May, 1861, William H. Coventry Waddle, general assignee in bankruptcy for said district, sold and conveyed the said land to Caleb H. Wallace in consideration of one dollar. (Rec., p. 35.) Wallace conveyed to Hardin, September 4, 1861, for the same sum of one dollar, (Rec., p. 39); Hardie conveyed to Brown, November 19, for this same sum of one dollar, (Rec., 40); and Brown to Dirst, December 2, 1864, for $2,000, (Rec., p. 42.) Dirst went into possession in the winter of 1864–65. The land prior to that date was unoccupied, and taxes had been paid by Corcoran from the year 1844, inclusive. (Rec., p. 48.)

I.

The deed from Russell to Breeze was not recorded until the year 1864. There could, therefore, be no constructive notice of its existence at the date of the mortgage to the United States, 1837, nor is it pretended that there is anything in the record tending to impute actual knowledge, or even suspicion, that Breeze had, *at that date*, any claim whatever upon the land. But it is contended that subsequently, and at the date of filing the bill for foreclosure and sale, such knowledge or suspicion appears to have been possessed by the United States, because in that bill the following clause occurs:

"And your orators further show unto your Honors that Francis Peyton, Gordon S. Hubbard, *Josiah S. Breeze*, H. S. Fuller, Augustus Garrett, Frederick J. Fraylor, Ashlisle Steele, Wm. Teele, H. Hugunin, D. Hugunin, Ebenezer Peck, and Richard J. Hamilton, commissioners of school lands, have or *pretend* to have *some interest* or *claim* upon the above described premises *as judgment creditors or otherwise;*" and process is accordingly prayed against them.

If this vague and general clause could be interpreted as implying a knowledge or suspicion that Breeze held or claimed to hold a paramount title by deed, antecedent to

the mortgage, which would involve a violent perversion of the language, it will be borne in mind, that such knowledge or suspicion cannot be carried back to the date of the mortgage, which is the important point of inquiry. For if the United States took the mortgage in good faith, without any such notice, knowledge or suspicion, the mortgage was unaffected by any such prior unrecorded deed, and no conveyance thereafter made would be affected by such subsequent knowledge. It is not pretended that Mr. Corcoran, the purchaser from the United States, stood in any other situation than that of his grantees.

The suggestion in the bill, that Breeze had or pretended to have some interest or claim upon the land as judgment creditor or otherwise, cannot in fairness be understood to imply any knowledge or suspicion of the existence of the deed to Breeze, nor could it put the United States upon any inquiry in that direction.

It is not any and every species of knowledge that will supply the place of the recording of a deed to land. The knowledge or notice necessary for this purpose must be such as to affect the subsequent purchaser with fraud. Dey *vs.* Dunham, 2 J. C. R., 182–190, citing:

Jolland vs. Stainbridge, 3 Ves., 478, where Lord Alvanly said:

"The person who takes subsequently, must know exactly the situation of the prior deed, and have meant to defraud."

See also 2 Sugden on Vendors, 537–8, Wyatt *vs.* Barwell, 19 Ves., 439, and Story's Eq. Jur., sec 400. The latter, in speaking of what is sufficient to put a party on inquiry, says, "that is whatever has a reasonable certainty as to time, place, circumstances and persons." In Jackson *vs.* Valkenburgh, 8 Cowen, 260, it was held that where a party had such notice as to put him on inquiry, and had therefore caused the records to be searched, he had done all that was required of him.

II

But suppose there was enough to put the United States on inquiry, and to affect them with knowledge of Breeze's unrecorded deed; was he a necessary or proper party to the foreclosure of their mortgage?

That deed purported to convey a title paramount to the mortgage, and on the face of it is repugnant to the existence of that mortgage, and to the claim of any equity of redemption under it. He therefore was not a necessary or proper party to a title setting up that mortgage and seeking to foreclose it. "No person need be made a party to a bill who claims under a title paramount to that brought forward and to be expressed in the suit. [Story, Pl., sec. 230.] See Clark vs. Peyton, 8 Wall 318

"So far as mere legal rights are concerned upon a title of foreclosure, the only proper parties to the suit are the mortgager and the mortgagee, and those who have acquired rights or interests *under* them, *subsequent to the mortgage.*"

Eagle F. I. Co., *vs.* Lent, 6 Paige, C. R., ~~858.~~ 638

We submit, therefore: 1st. That Breeze was not a necessary or proper party to the bill of the United States, and consequently that the fact alleged and relied upon by the plaintiff in error, that he was not served, even if properly shown, was immaterial. The decree of foreclosure was valid, and the conveyance under it sufficient to pass the legal title, leaving Breeze to his equitable remedies, if he had any. Bank U. S. *vs.* Carroll 4 B. Mun., 40.

But secondly, we maintain that it sufficiently appears that Breeze was duly served and was a party to the foreclosure suit.

The record in the foreclosure suit (Rec., p. 17.) sets forth the subpoena and proceeds, "which said subpoena went into the hands of the marshal to be executed, and was returned by him into the clerk's office, executed upon all of

the defendants, by delivering to each of them true copies thereof."

And the record proceeds as follows, after noting a continuance:

"This day, to wit, the 14th day of June, A. D. 1864, came the said complainants by their solicitor, and the said defendants having been duly served with process, and having failed to appear, as by the within writ they were commanded, and having failed to answer the complainants' bill of complaint herein filed, although more than three calendar months have elapsed and passed by since the return of the writ aforesaid upon them executed. It is therefore considered, &c. &c." (Record, p. 17.)

As to this last entry, the plaintiff in error maintains, (Mr. Fuller's brief, page 8, at bottom,) that the words "said defendants" do not refer to all the defendants, but only to those returned served by the Marshall, and he refers to the subpœna which is set forth in the case of Collins *vs.* Riggs, (the next case on the docket of this court, and one in every essential fact like this,) where the return is that only a part of the defendants were served, not including Breeze. But it will be seen by looking at that case, that after the marshall's return there is a caption naming all the defendants, and among them Breeze; this is part of the decree *pro confesso*, and the words "said defendants" in that decree, naturally and necessarily refer to the enumeration in the caption.

It is true that only one subpœna is found on the files, and that it was issued September 1, 1840, and returned November 2, 1840, *non est*, as to Breeze; but the learned Circuit Judge, Drummond, to whose attention this point was presented, notices the fact, that another term of the court as fixed by law had intervened between the return of that subpœna and the date of the decree, and observes "we do not know that another process was not issued and served on him, and therefore he might have been duly in

court on the first Monday of June, 1841." (See his opinion in Mr. Dent's printed brief, page 5.) The learned judge below held correctly "that in a collateral issue, if any proof whatever, either in the case or out of it is to be admitted, to contradict the decree alleging due service of process, that proof must show that the averment *could not* be true." (Mr. Dent's brief, page 5.)

The cases cited by him fully establish the principle thus laid down. Goudy *vs.* Hall, 30 Ill., 109. Rivard *vs.* Gardner, 39 Ill., 125. Miller *vs.* Handy, 40 Ills., 448.

Proceeding to sum up the facts, that the title of the United States rested upon a mortgage made in 1837, that there was nothing upon the records of the county to affect the validity of the mortgage; nothing to affect the sale made under the decree of foreclosure except the recital in the bill, that Breeze had some interest in the land; but that Breeze was made a party to the bill, and the decree recited that he was served with process; he concludes, that as the record itself contains nothing to show that the averment was not true, it must be held that Breeze was served with process. "It is only in that way,' he observes, "that we can give stability to the decrees and judgment of courts, and to titles obtained under them, especially after the lapse of so many years." (Opinion, Brief, p. 7.)

It must be borne in mind, that the question, what was the true record of the foreclosure suit arose in an action of ejectment in the same court on the law side, and that this court is now asked to reverse the decision of that court as to what was its own record.

III.

Under the rule of this court the plaintiff in error has assigned four errors.

1st. To the admissibility in evidence, of the record of the foreclosure suit, which had been excepted to upon the trial. (Rec. 23, fol. 61.)

In any view of the case, it seems to us that this was admissible evidence. The object of this evidence, like that of any deed forming part of a chain of title, was simply to show the title on which the plaintiff claimed; its legal effect was a question arising subsequently, and to be decided by the court as matter of law.

The second error is the admission in evidence of the deed from the United States to Corcoran.

The same remark applies to this alleged error.

But it moreover appears to us that this deed is not necessarily and inseparably connected with the decree of foreclosure and sale. The deed recites that it is made by the Solicitor of the Treasury in pursuance of authority given him by the act of May 29, 1830. That act authorizes the Solicitor of the Treasury, amongst other things, "to sell and dispose of lands assigned or set off to the United States in payment of debts, *or vested in them by mortgage or other security for the payment of debts.*" (4 Stat., 414.) If therefore there had been no foreclosure, this deed was equally authorized by law, and entitled the grantee of the United States to take possession in the same manner that the United States might have done as mortgagee of a natural person. The legal right of possession alone was in issue in the action of ejectment, and this deed was admissible to support that right in the plaintiff. Taylor *vs.* King, 6 Munf., 366; 1 Hilliard, Real Est. 467.

The third error as assigned in the brief, is that the court erred in holding that the plaintiff in error did not, by the several deeds which he offered in evidence, and the possession which he took of the land in controversy, acquire and show a paramount right as against the plaintiff below. The exception here referred to is as follows (Rec., p. 48):

"The defendant insisted that it appeared from the evidence that he went into possession of the premises in controversy under the several conveyances heretofore given in

evidence by him in the winter of 1864–5, the same being then, and having always before been, vacant and unoccupied, and he thus acquired a paramount right to said premises to that of the plaintiff, as shown in evidence in the trial of this cause.

But the court decided and held that the plaintiff was entitled to recover, notwithstanding the possession taken as aforesaid."

This does not appear to be an exception to any ruling of law upon an admitted state of facts. The bill of exceptions recites that "the defendant *insisted* that it appeared from the evidence," &c., but the court does not certify that these were facts in the case, and the ruling of the court was simply that the possession taken as aforesaid, did not prevent the plaintiff from recovering.

It will be be seen that the plaintiff below insisted that it appeared from the evidence that he went into possession "under *the several* conveyences" given in evidence, while the only evidence on the subject is a stipulation that he went into possession, claiming under the "last-mentioned deed" viz., that of Brown, of December 12, 1864. (Rec., p.44.) The only proposition of law involved in this exception, seems to be that if the holder of an unregistered deed gets possession after thirty-four years, he is not affected by the failure to record the deed as against a *bona fide* purchaser without notice of such deed. No authority for such a proposition is known to us, and none is cited in the brief of the plaintiff in error.

The fourth error assigned, is nothing more than a general assertion that the judgment upon the whole record should have been for the defendant and not for the plaintiff, and that all the findings of law and fact upon which that judgment is based, were erroneous.

It seems, therefore, to require no further argument than has already been submitted upon the points in detail.

Referring to and relying upon the brief filed by Mr. Dent, who was of counsel in the court below, we submit, in

Conclusion,

That the jugment should be affirmed.

J. M. CARLISLE,
J. D. McPHERSON,
for Defendant in Error.

Strong

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, A. D. 1871.

No. 179.

JOHN DIRST, *Plaintiff in Error,*
vs.
WILLIAM B. MORRIS, *Defendant in Error.*

Error to Circuit Court of the United States for the Northern District of Illinois.

Argument of Thomas Dent,

FOR DEFENDANT IN ERROR.

Jameson & Morse, Printers, 240 East Madison St., Chicago.

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Error to Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR THE DEFENDANT IN ERROR.

This was an action of ejectment brought by Morris, the defendant in error, against Dirst, for the recovery of N. E. ¼ of Section 23, T. 35 N., R. 8 E., formerly in LaSalle County, (p. 30 of printed Record,) but now in Kendall County, Illinois. The cause was tried by the Court without the intervention of a jury, and the finding was for the demandant on the following chain of title:

1. John B. F. Russell, the common source of title, it was agreed, was the patentee of the land. (P. 5 of printed Record; p. 11 of original Record.)

2. He, being indebted to the United States in a large sum of money, executed a mortgage to Henry D. Gilpin, Solicitor of the Treasury of the United States, in trust for the United States, December 21, 1837, and this mortgage was recorded in LaSalle County, in which the land was situated, May 11, 1838.

3. September 1, 1840, the United States filed a Bill in Equity in the Circuit Court of the United States for the District of Illinois, to

foreclose said mortgage, in which bill Russell and Josiah S. Breese and sundry other persons were defendants, and such proceedings were had in the cause that the subpœna in Chancery returnable on the first Monday in December of that year, not having been served on all the defendants, the cause was continued at the December term, 1840, and at a subsequent term, to wit: on the 14th of June, 1841, the Court found that all the defendants had been duly served with process, (p. 17 of printed Record,) and on their default the bill was taken for confessed, and on the 22d of June, 1841, on the coming in of a Master's report showing $66,857.18 to be due on the mortgage, a decree was entered requiring the payment of that sum within twenty days, and directing a sale by the Master in case of default in payment; which decree was made absolute June 6, 1842; and on the 20th of April, 1843, the Master, Geo. A. O. Beaumont, Esq., having advertised as required by the decree, sold this land to the United States for $160, (p 21 of printed Record, p. 57 of original Record,) and on the 21st of April, 1843, the Master executed a deed to the United States, which was recorded July 13, 1844, in Kendall county, in which the premises then were.

The sale was duly reported by the Master, and his report of the same was confirmed June 19, 1843. (P. 28 of printed Record.)

4. December 28, 1847, Ransom H. Gillet, then Solicitor of the Treasury, having due authority of law, (See 5. United States Statutes at Large, 414,) conveyed this land, with other land, to William W. Corcoran, by a deed which was recorded in said Kendall county, (the proper county,) July 27, 1848. (See pp. 28-29 of printed Record.)

The deposition of Mr. Corcoran, (see pp. 44-46 of printed Rec.,) shows that he bid for the land under a public advertisement inviting proposals, and that at the time of paying for the same and receiving said deed, he had no notice whatever of any adverse claim, and did not, though he paid the taxes up to and including those for 1864, (p. 48 of printed Rec.; p. 128 of original Rec.,) learn of any adverse claim until the latter year.

The testimony of A. Hyde, Mr. Corcoran's business agent, is confirmatory of the same facts. (Pp. 46–48 of printed Rec.)

5. December 20, 1867, Mr. Corcoran conveyed to Morris, the defendant in error. (P. 30 of printed Rec.)

The sufficiency of the title of the defendant in error will not probably be questioned, except by claiming that the adverse title is paramount for some reason which it remains for the counsel of the plaintiff in error to assign.

This case is almost identical with that of *Collins* vs. *Riggs*, next to it on the docket of this Court. The two causes are so nearly alike that they might fitly be argued together; yet it is believed that no special argument is necessary as to either of them to sustain the finding and judgment of the Circuit Court. It is quite enough, perhaps, to refer to the Opinion on which that judgment was rendered; which Opinion is reported in the *Chicago Legal News*, vol. 1, p. 234, and is given in full in the Brief on the part of the defendant in error in said case of *Collins* vs. *Riggs*, now standing for argument here.

The principal labor of argument must, then, devolve upon the counsel of the plaintiff in error, as the Opinion of Judge Drummond, which it is supposed this Court will be glad to notice, succinctly states and determines the questions presented by the record. It will be noticed, as is suggested in the Brief in the Collins case, that the head notes inserted in the *Legal News* above the Opinion, do not fully epitomize the points decided, one of which was, that under the registry laws, the action of ejectment was maintainable by the grantee of the United States, as against the plaintiff in error, claiming under a deed

from Russell to Breese recorded subsequently to the giving and record of Russell's mortgage to the United States, and this, independently of the question whether any process in the suit foreclosing the mortgage was actually served on Breese or not; and so it was held that the rights of Breese, whatever they once were, were fully barred by the foreclosure suit, and yet that even if the averment in the Record, declaring that the process was served on Breese, could have been shown to be incontestably false or inconsistent with possibility, still, the United States having taken a mortgage from Russell on this land for a large debt, without notice at the time that he had previously given a deed for the same to Breese, and that mortgage having been recorded in the proper County before the deed was recorded there, and the United States having also, after the foreclosure and Master's conveyance thereunder to the United States, sold and conveyed to an innocent purchaser, whose deed was likewise recorded there many years before the deed from Russell to Breese, the remote grantee of that purchaser, being the defendant in error, plaintiff in the Court below, had a legal right to recover the land from one claiming under Breese. It ought also to be remarked that in view of the fact that Judge Drummond's Opinion will be before the Court, in the way already stated, this argument may be considerably abbreviated, and will not indicate, so fully as might otherwise be deemed profitable, the force and binding character of the averments in the Record in the foreclosure suit.

But it may be well to notice how bare the case is of objections taken by the plaintiff in error in the Circuit Court. These objections are stated at pp. 23, 28 and 48 of the printed Record. One of them questioned the admissibility of the transcript in *Russell* vs. *Breese*, because the counsel wished to have it assumed that Breese had a paramount title, and was not served with process in the suit. The next objection, (p. 28 *ib.*,) was to the reception of the deed from the Solicitor of the Treasury to Wm. W. Corcoran, not on account of any want of regularity or formality in the deed itself, but because the plaintiff in error claimed that the deed did not profess to transfer to Corcoran any part of the mortgage debt, and because the plaintiff in error had also introduced

Seth Paine as a witness to show that Breese removed from Illinois before the process in the foreclosure suit was supposed to have been served on him, and the process found in the files of the case, alleged to be the one referred to in the taxed bill of costs, did not show such service. (See pp. 23–25 of printed Record for the testimony offered to impeach the decree of foreclosure).

These objections are closely akin to each other, and were made at a stage of the case when Breese had not been shown to have had any interest in this property, and when it did not appear that the plaintiff in error had himself any interest derived from Breese or anybody else. In short, they were irregular objections, not based upon any showing of right on the part of the plaintiff in error to question the deed from the United States to Corcoran. But this aside: Is there any doubt of the competency of the deed as evidence? If not, it follows that the objections were not well taken, and that the ruling of the Court thereon was correct, by which ruling the deed was received as evidence for whatever it was worth, while the plaintiff in error was left free to show a paramount title or any other title which he might claim.

But it is unnecessary to criticise the objections in question on formal or technical grounds. They are immaterial and without force for more substantial reasons, because while they were presented as controlling the case, it must be manifest that the plaintiff in error could not thus excuse himself from presenting his defence, which might or might not have to be weighed with the title shown by the demandant. In point of fact the plaintiff in error did so present his defence, and for various reasons it was found to be insufficient to defeat the demandant's title, which was abundantly fortified not only by the decree of forclosure, but by the registry laws, which had been observed in good faith in respect to the chain of title on the part of the plaintiff in error, and inexcusably ignored on the other side.

And it may also be remarked of these objections, in passing, that they appear to be based on a misconception of the law of parties to a fore-

closure suit; for while they are evidently predicated on the theory that one who claims a title paramount to and earlier than the mortgage, is a necessary party to a suit to foreclose the mortgage, the authorities overthrow such a notion.

Frye vs. Bank of Illinois, 11 Ill., 367.
Eagle Fire Insurance Co. vs. Lent, 6 Paige, 635.

The other objection indicated (p. 48 of printed Rec.,) is pointless, save that it intimates a question as to which is the paramount title. But to take it as it is, it announces a claim that the title under Russell's deed to Breese, which remained unrecorded in the county where this land is for almost twenty-seven years after its date, was perfected *by possession being taken by the plaintiff in error*, and that such possession should have the effect of overthrowing the mortgage from Russell to the United States, and the deed from the United States to Corcoran, although each of these was evidently taken in good faith, and for value, and placed upon record in the proper county, and for many years acted upon without notice of there being any hostile claim on the part of Breese. A conclusive answer is that the rights of the United States and of Corcoran, respectively, were acquired and perfected before such possession was taken adversely to Corcoran.

Can it, however, be necessary to review or arraign the objections so made by the plaintiff in error?

If it be conceded that they present a question as to the relative merits or force of the respective claims of title as between the demandant and plaintiff in error, that question must be resolved by the affirmance of the judgment of the Circuit Court for several reasons which may be briefly stated:

I.

The title of the demandant, the links in which have been already shown, is complete in itself, and put the plaintiff in error to the necessity of offering proof to surmount it.

II.

The evidence tendered by the plaintiff in error was insufficient to defeat the decree of foreclosure whereby any pretended rights of Josiah S. Breese, under whom he claimed, were fully barred.

As to this, see, in addition to the authorities referred to by Judge Drummond:

Grignon vs. Astor, 2d How. 319, 340, 341.
Sargeant vs. The State Bank of Ind., 12 How. 371.

The evidence of Seth Paine, offered as tending to show that Breese was living out of the district when he was supposed by the Record to have been served with process, is of a very weak character. Consistently with it, Breese may have been in Illinois in 1841 before the process is alleged in the Record to have been served upon him; and the other evidence submitted as impeaching the Record is as fragile and inconclusive.

III.

But if the Record had been successfully assailed and overthrown as being ficticious and false, the demandant would still have been entitled to recover, because there is a total absence of evidence casting any doubt on the good faith of the United States in taking the mortgage, or showing that the United States had *at the time of receiving the mortgage*, any sort of notice that Russell, the mortgagor, had previously conveyed this land to Breese. Therefore, the United States in getting the mortgage for the large debt due from Russell, was in the position of a purchaser entitled to the protection of the Statutes concerning the record of conveyances.

2 *Leading Cases in Eq.*, Part 1, p. 53,
Notes to *Basset vs. Nosworthy.*
Lancaster vs. Dolan, 1 Rawle, 245.
Chapman vs. Emery, Cowp. 278.

The Statute of Illinois in force at the time required that conveyances should be recorded in the several counties where the lands thereby

conveyed were situated, and declared them to be void as to creditors and subsequent purchasers without notice until filed for record in the proper county. The language of the law was as follows, quoting from the Act of January 13, 1833, pp. 488–9 of *Purple's Real Estate Statutes:*

"SEC. 2. That after the first day of June next, all deeds and title papers of whatsoever description, for lands lying in this State, whether owned by residents or non-residents, shall be recorded in the county where the lands are situated: *Provided*, such county be organized, and if not, then they shall be recorded in the county to which such unorganized county shall be attached for judicial purposes.

* * * * * * *

SEC. 5. That from and after the first day of August next, all deeds and other title papers which are required to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice, and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers without notice, until the same shall be filed for record in the county where the said lands may lie."

The law is still substantially the same, the phraseology having been but slightly changed in revising the Statutes in 1845.

The application of this law will be found to be decisive in favor of the demandant, without any necessity for aid from the decree of foreclosure.

(*a.*) Let it be considered first with reference to the rights which were acquired by the United States in taking the mortgage.

The United States having then no notice in fact or constructively of Breese having given a prior deed for this land, were within the letter and spirit of the Statute entitled to have such prior deed adjudged to be void,

and could and did obtain a priority over it by having the mortgage recorded in La Salle county, as was done on the 11th of May, 1838. In that situation of affairs, the United States could, after condition broken, have sustained ejectment against Breese, the grantee in such void deed, if he had entered into possession; and the right to maintain the action would not have been in any way dependent on the foreclosure of the mortgage.

Carroll vs. Ballance, 26 Ill., 15, 16.

Then, if Breese had considered himself entitled to an interest in the equity of redemption, he would have been under the necessity of applying to a Court of Equity to obtain relief.

Parsons vs. Welles, 17 Mass., 419.
Hill vs. Payson, 3 Mass., 559
King vs. State Mut. Fire Ins. Co., 7 Cush., 714, 715.
Carroll vs. Ballance, 26 Ill., 15, 16.

Nor could Breese have been aided in the action of ejectment by saying that the deed to him was recorded in some other counties. That was not a compliance with the Statute as to the land in La Salle county, a title to which the United States could and did acquire by taking the mortgage without actual notice of the alleged prior conveyance of these lands by the mortgagor. The Statute does not extend the effect of the record of a deed in one or more counties so as to make it notice in regard to land situated in another county than that in which such registry is made.

Harper vs. Topley, 55 Miss., (6 George,) 506, 509.
Taylor vs. McDonald's Heirs, 2 Bibb, 421, 423.

It is questionable whether Breese could, in case he had entered and been ejected, have maintained a bill for redemption, even if the United States had never taken any steps to foreclose the mortgage; but such a supposition it is not deemed necessary to consider: it being sufficient for the purposes of this case, to find that ejectment against him could have been maintained by the United States; for it follows, beyond peradventure, that the grantee of the United States could, after

the proceedings to foreclose the mortgage, and under the record of those proceedings now presented, have ejected Breese or any one claiming under him.

(*b.*) All the arguments conducing to show the right of the United States to recover in such a case apply with still greater force in favor of Mr. Corcoran or his grantee, the defendant in error. For, on what ground could Breese or his legal representative defend against Corcoran after Corcoran's purchase on the faith of the decree, and when the deed to Corcoran was placed on record in Kendall County, (the proper county at the time,) on the 27th of July, A. D. 1848, (p. 29 of printed Record,) while the adverse deed relied upon by the plaintiff in error, was not recorded there until May 10th, 1864? Corcoran was a *bona fide* purchaser, and the priority of record of the deed to him gives that deed a priority over the previously unrecorded deed to Breese, unrecorded, that is to say, in the county where this land was or is situated. Mr. Corcoran bought, then, on the faith of the truth of the recitals in the record showing that process in the foreclosure suit was served on Breese; and he also bought in the absence of any record in Kendall County, or in the older county of LaSalle, to warn him of any claim by Breese. Nor is it probable that Breese did then make or pretend to have any such claim, for in his Schedules in Bankruptcy, sworn to by him on the 5th of August, 1842, he made no such claim. (See p. 48 of printed Record). And there is not a strong presumption that the deed from Russell to Breese was an honest or *bona fide* conveyance at best. Yet one of the remote grantors of the plaintiff in error took a deed from Breese's assignee in bankruptcy, March 23, 1861, for the consideration of $1, for this and much other land, (pp. 35–7 of printed Record), and that deed was recorded in Kendall County, May 10th, 1864, cotemporaneously with the deed of Russell to Breese!! It is suspicious on the face of it, as is also the transcript of the deed from Breese to Brown, dated June 22, 1861, which was recorded in Kendall County, May 10, 1864. The making of such deeds, one from a bankrupt, who after his bankruptcy had no interest in the estate, and the other from the assignee in bankruptcy,

for a mere nominal consideration, when the bankrupt himself had not claimed or scheduled the property, indicates an unjust attempt to speculate by clouding the title of Mr. Corcoran, under which he had paid taxes for some 12 or 13 years before these deeds were made; and yet it may be gravely argued, as the point made by the plaintiff in error in the Circuit Court suggests, that the fact of Dirst's having had the boldness to enter into possession of the land sixteen years after the deed to Mr. Corcoran was recorded in Kendall County, is ground for defence!! No such force has ever been given to possession for so short a period as that claimed by the plaintiff in error in this case. Priority of record may be and is material, and it is sometimes determinative of title as it would be in this case if there had never been any foreclosure of the mortgage as against Breese, and it is, in conformity with and in addition to such foreclosure, conclusive in favor of the demandant; but mere priority of possession has never been allowed to have such force as against the record title.

But these observations need not be elaborated.

(*c.*) The position of the United States was strong, and sufficient without any aid from the foreclosure proceedings to sustain ejectment on the mortgage from Breese and the priority of the record thereof as to the land in controversy; and the position of Mr. Corcoran's grantee is inviolable.

1. At the time of Mr. Corcoran's purchase the decree recited all the facts necessary to show jurisdiction as to Breese; and it was not necessary for Mr. Corcoran to *look beyond the decree* when the recital of such facts appeared on the face of the proceedings.

Buckmaster vs. Carlin, 3 Scam. 104, 107, 108.
Voorhes vs. Bank U. S., 10 Peters, 477.

The decree strongly rebuts the presumption of any notice to Mr. Corcoran of an adverse claim by Breese, and thus supports Mr. Corcoran's deposition, to which reference has already been made. But if there were just pretence of any such notice, would it be sufficient to offer such

slight evidence of it? On the contrary, the proof would have to be clear and strong, and sufficient to show fraud on the part of Corcoran in taking a grant from the United States.

Story's Eq. Jur. § 404.
Wheaton vs. Dyer, 15 Conn., 311.

For, as was held by Chief Justice Parsons in *Norcross vs. Widgery*, 2 Mass., 509, "The Statutes requiring the registry of conveyances being so very beneficial, and it being so easy to conform to them, when a prior conveyance not recorded until after one of a subsequent date, is attempted to be supported on the ground of fraud in the second purchase, the fraud must be clearly proved."

But in this case, the good faith of the United States or of Mr. Corcoran is unquestionable, and an adequate consideration is shown to have been given by each of them.

Therefore Mr. Corcoran could recover on the strength of the decree alone, as is so forcibly maintained in the Opinion of Judge Drummond.

2. And again, the effect of the deed to Mr. Corcoran being recorded in Kendall County before the deed from Russell to Breese, was, to give Mr. Corcoran a good and indefeasible estate, which, of course, he could convey to the defendant in error, as he did.

Flynt vs. Arnold, 2 Metc., 623.
Dunlap vs. Wilson, 32 Ill., 517–523.

For it cannot be necessary to argue that when the United States foreclosed the mortgage, no matter whether Breese was a party served or not; and when the land was sold by the Master to pay the debt, sold in separate parcels, and bid in by the United States, and when the United States afterwards conveyed to Corcoran, he acquired all the rights which the United States ever had either in the land or in the debt *pro tanto*.

Tallman vs. Ely, 6 Wisc., 244.
1 *Washburn on Real Prop.*, 520.
Given vs. Doe, 7 Blackf., 210.
Wyman vs. Hooper, 2 Gray, 141–146.

Recapitulation at any length would be superfluous. The Opinion pronounced by Judge Drummond does not need support. The decree of foreclosure going to make up the title of the demandant is good as against Breese, and consequently defeats any claim on the part of the plaintiff in error. But the attack on the decree is by weak and improper testimony, and inconclusive in its nature, and it is also altogether indecisive, for without the decree the United States could have maintained this action by reason of the priority of record of the mortgage to the United States; and the defendant in error, having all the right and title of the United States, and even a better right to rely on the decree, and, added to all that, having the benefit of Mr. Corcoran's *bona fide* purchase for value, consummated and enforced by like priority of record in the proper county, the facts have only to be set forth to demonstrate that the finding of the Circuit Court is correct.

Only a brief notice of the argument of Mr. Fuller for the plaintiff in error, received since the foregoing went to the printer, will now be given:

1. It assigns too extensive a scope to the points made in the Circuit Court during the progress of the trial. They will hardly bear the tension applied to them.

The first and second of them but questioned the admissibility of the decree of foreclosure and of the deed from the United States to Corcoran. But there really is no question of such admissibility. The only possible question is as to the weight of the decree and deed respectively as evidence, and the points made were not directed to this question at all.

The third point or objection demanded that the Court should give undue effect to the possession of Dirst; as if the parties were merely listed for a race to enter upon this land as a prize to the swift footed. If there ever was a time when such a cheap mode of getting the land was open to Breese, neither he nor any of his grantees adopted it in time, for the priority of record of the mortgage to the United States,

and of the deed to Corcoran made it unnecessary for the United States or Corcoran to enter upon any such race, that priority of record having the effect of itself to protect and confirm such mortgage and deed; and therefore Dirst was not on a footing of equality with Mr. Corcoran as to title, and could not become entitled to the land by merely taking possession of it.

2. Yet the form of the objections is of minor consequence; for the fundamental grounds on which the argument for the plaintiff in error is based, are all of them faulty, and the authorities cited for him are inapplicable to the case.

(*a.*) Was Breese a necessary and indispensable party to the suit to foreclose the mortgage? The true answer is in the negative, as the authorities above cited show; and the authorities cited by Mr. Fuller harmonize with this answer, for they only hold that if Breese had acquired an interest under the mortgagor, or in the Equity of redemption, after the making of the mortgage, he would then have been a necessary party to a perfect foreclosure of the mortgage, but not that such foreclosure without joining him as a party would have been entirely null, as is claimed by the counsel. The effect of not joining him as a party, if he had acquired an interest in the Equity of redemption after the making of the mortgage, would have been only that he would have had an opportunity at a later time to file a Bill to redeem from the mortgage; but if he had entered meanwhile, he could have been ejected. Much more, then, could ejectment be maintained against him or his grantee, when, if he claimed at all, he claimed adversely to the mortgage, under a deed antecedent to it in date, and when he was not a necessary party to the Bill for the foreclosure of the mortgage, and when, also, the Statute declared that his deed should be adjudged void as to any one standing in the position of the United States or of Mr. Corcoran.

(*b.*) It is assumed by the counsel secondly that the record in the foreclosure suit is silent as to the question whether Breese was

brought into Court or served with process. But the assumption is directly antagonistic to the language of the order of the Court, which expressly states that the said defendants had been duly served with process, &c. (See p. 17 printed Record.) Said defendants as there used referred to all the defendants, and no other construction is consistent with the allegation, or the action of the Court in the premises. The further assumption, in the same connection, that the summons of Sept. 1st, 1840, is positively shown, or reasonably well proved, to have been the only one issued in the case, is not well sustained: for, as between the date of the order of continuance on the 17th day of December, 1840, and the taking of default on the 14th of June, 1841, there was ample time for the issuing and service of another or even more than one process returnable on one of the intervening rule days, the presumption that there was such a process, and that it was served according to the language of the order of June 14th, 1841, should now be conclusively indulged, and therefore, it is not subject to be ovethrown by any such testimony as this record contains.

(*c.*) The corner stone of the whole argument for Dirst, after all, is the proposition that "the deed made by the Solicitor of the Treasury to Corcoran, not being accompanied by an assignment of the whole or any part of the mortgage debt, passed to him no title or estate in the mortgaged premises." The fallacy of that proposition lies in an inconsiderate estimate of the circumstances connected with and force to be given to the deed. It was not a deed given for a part of the mortgaged premises *before the legal estate of the mortgagee became absolute, and thus an attempt to convey such land separated from the debt*, nor was it a deed made prior to the foreclosure of the mortgagor's equity of redemption; but it was given after such foreclosure, and after the United States had purchased this tract separately at the Master's sale, and received a deed from the Master, effectuating a transfer to the United States of all the estate of the mortgagor in this tract, for a specific sum, representing the value of the estate mortgaged, and when the United States thereafter conveyed to Corcoran, the conveyance was as operative and perfect as if Russell

on the 21st of Dec., 1837, the date of his mortgage to the United States, had, instead of giving that mortgage, given an absolute deed to the United States or to Corcoran. The mortgage, when foreclosed as to Russell and those setting up claims subsequent thereto and under him, became equal to an absolute deed from him of like date: and in that state of case, the conveyance from the United States to Mr. Corcoran enabled him to proceed to recover the land from any intruder, and put Mr. Corcoran or his grantees in as good a position as to this land as if the United States had assigned to him the mortgage debt and the mortgage itself together with all interest in the whole of the mortgaged premises.

The authorities above cited (Point III, b,) show that Mr. Corcoran had, and that his grantee has, as full and perfect a right to proceed in ejectment under the deed from the Solicitor of the Treasury, succeeding that from the Master in Chancery to the United States, as the United States could possibly have had or could have given by an assignment of the mortgage and a transfer of all interest in the premises, and it is believed that no well considered case to the contrary has been or can be found.

The defendant in error might safely rest his case on this point. He has all such estate as Russell could, from the records in LaSalle County, on the 21st of Dec., 1837, apparently convey; and as Russell on that day made a mortgage to the United States, which, by the registry thereof acquired priority over his deed to Breese, and afterwards became absolute, and by the proceedings on it ripened into an absolute conveyance dating back to its execution, and as it is not disputed that the mortgage did have such priority over the deed to Breese by force of the Statute concerning the record of conveyances, no legal defence is left to Dirst as the representative of Breese.

Respectfully submitted.

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CHICAGO, Feb. 19th, 1872.